

***United States Court of Appeals
for the Second Circuit***



APPENDIX

75 7226

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 75-7226

PETER V. KEILEY,

Plaintiff-Appellant,

-against-

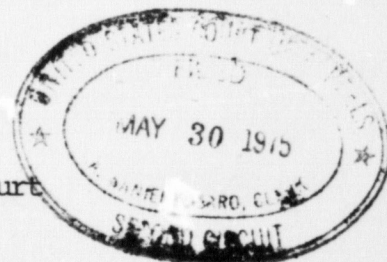
ELBERT HINKSON, etc., et al.,

Defendants-Appellees

On Appeal from the United States District Court
for the Southern District of New York

APPENDIX

CARL E. PERSON & WALTER C. REID
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c/o Carl E. Person
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RELEVANT DOCKET ENTRIES
74 Civ. 5075

<u>Date</u>	
11-26-74	Plaintiff's notice of motion and supporting copy of amended complaint for convening of 3-judge court
11-26-74	Amended complaint
1-22-75	Affidavit by Carl E. Person, sworn to January 21, 1975, in support of motion for convening of 3-judge court
1-28-75	Defendants' affidavits by Elliot R. Press, sworn to January 23, 1975 and Elbert C. Hinkson, sworn to January 7, 1975, and notice of motion for order dismissing the amended complaint under Rule 12(b), F.R.Civ.P.
1-28-75	Defendants' memorandum of law with exhibits A through G
1-30-75	Affidavits by plaintiff Peter V. Keiley, sworn to January 30, 1975, Eugene St. Louis, sworn to January 29, 1975 and Carl E. Person, sworn to January 30, 1975, in opposition to defendants' motion to dismiss
2-5-75	Affidavit by Elliot R. Press, sworn to February 4, 1975, in support of defendants' motion to dismiss
2-5-75	Reply affidavit by Carl E. Person, sworn to February 5, 1975, in further opposition to defendants' motion to dismiss
2-5-75	Supplemental affidavit by plaintiff Peter V. Keiley, sworn to February 3, 1975
2-7-75	Affidavit by Elliot R. Press, sworn to February 7, 1975
3-5-75	Affidavit by Thomas Dean, sworn to January 31, 1975
4-3-75	Opinion # 42,174 and order of Hon. Inzer B. Wyatt denying plaintiff's motion for a 3-judge court; dismissing the action as to defendants Beame and Goldin as improper parties; treating defendants' motion to dismiss as a summary judgment motion; granting the summary judgment motion; directing the clerk to enter judgment in favor of defendants; and dismissing the action
4-7-75	Plaintiff's notice of appeal from the denial of plaintiff's motion for the convening of a 3-judge court and the grant of defendants' motion to dismiss (treated as a motion for summary judgment) by order of Hon. Inzer B. Wyatt dated and filed April 3, 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

PETER V. KEILEY,	:	74 Civ. 5075 (IBW)
Plaintiff,	:	AMENDED COMPLAINT
-against-	:	CLASS ACTION
ELBERT HINKSON,	:	(Jury Demand)
Director of the Parking	:	
Violations Bureau of New York City,	:	
in his individual capacity,	:	
ABRAHAM D. BLAME,	:	
Mayor of New York City,	:	
in his individual capacity,	:	
and	:	
HARRISON J. GOLDIN,	:	
Comptroller of New York City,	:	
in his individual capacity,	:	
Defendants.	:	

-----x

Plaintiff, PETER V. KEILEY, by his attorneys,
Carl L. Person and Walter C. Reid, as and for his complaint,
respectfully alleges:

COUNT 1

(Denial of Civil Rights ---
Enforcement of Non-Existent Parking Judgments)

Jurisdiction

1. The jurisdiction of this Court to hear this
complaint is based on the original jurisdiction of this
Court under § 1343 of the Judicial Code (28 U.S.C.A.
§ 1343) to hear an action to "redress the deprivation

under color of any State law, statute, ordinance, regulation, custom or usage" of the State of New York and the City of New York "of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States". Specifically, counts 1, 3 and 4 of this action are brought to redress the deprivation of rights, privileges and immunities secured to plaintiff by the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States (as to counts 1, 3 and 4), the Excessive Fines Clause of the Eighth Amendment to the Constitution of the United States (as to counts 3 and 4), and by the Civil Rights Act, § 1983, 42 U.S.C.A. § 1983 (as to counts 1, 3 and 4), providing equal rights under state and local law for citizens or other persons within the jurisdiction of the United States.

Venue

2. Plaintiff's claims have arisen in the Southern District of New York. Venue is provided by § 1391(b) of the Judicial Code (28 U.S.C.A. § 1391(b)).

Class-Action Allegations

3. Plaintiff seeks to represent the class of 100,000 persons who (during the period ending November 19, 1974, the date of filing of the original complaint herein,

and commencing no earlier than November 20, 1968) paid one or more New York City parking tickets more than two years after the expiration of the time prescribed for entering a plea or making an appearance (which class of persons shall hereinafter be referred to as the "Class").

4. Plaintiff claims that subdivisions (1)(A), (1)(B), (2) and, with the appropriate findings by this Court, subdivision (3) of Rule 23(b) of the Federal Rules of Civil Procedure make it proper for plaintiff to maintain counts 1 through 4 of this complaint as class actions on behalf of the Class against each of defendants.

5. Plaintiff claims that each of the following averments justify a finding that plaintiff is entitled to maintain each of counts 1 through 4 of this complaint as a class action on behalf of the Class:

(i) plaintiff claims to represent the 100,000 persons who are members of the Class.

(ii) plaintiff claims that he will fairly and adequately protect the interests of the Class on the basis that:

(a) plaintiff is a member of the Class;

(b) plaintiff is a professional investigator and has investigated various aspects of the operations of the New York City Parking Violations Bureau in connection with the allegations herein,

(c) plaintiff is himself desirous of obtaining a judicial determination with respect to the matters alleged herein; and

(d) plaintiff is represented by counsel experienced in civil rights and class-action litigation.

(iii) the following questions of law or fact are claimed to be common to the Class:

(a) whether the New York City Parking Violations Bureau and any predecessors were required to and did in fact render a judgment, create a judgment roll and enter a judgment within two years from the expiration time prescribed for entering a plea or making an appearance with respect to New York City parking tickets;

(b) whether collection of non-existent and/or non-enforceable "judgments" without disclosure of such non-existence and/or non-enforceability is a fraud,

(c) whether retention of moneys paid by members of the Class to predecessors of defendants herein can be collected from defendants herein,

(d) whether the assessed stepped-up "penalties" (of up to and including \$25) for non-appearance and/or failure to pay, within a set period of time, stipulated fines (ranging from \$10 to \$25) for the parking violations themselves are excessive fines, a denial of equal protection, a denial of due process, or other constitutional violation;

(e) whether the New York City Parking Violations Bureau and its procedures is unconstitutional in its statutory basis and/or application thereunder; and

(f) whether a three-judge court should be convened to hear any of the foregoing issues.

(iv) the foregoing actions are claimed to be maintainable by plaintiff as class or sub-class actions under subdivision (b) (3) of Rule 23 of the Federal Rules of Civil Procedure; and plaintiff claims that the following averments support the findings required by said subdivision (b) (3).

(A) there appears to be no interest in any members of the Class in individually controlling the prosecution of separate actions inasmuch as no similar suits have been filed prior to the filing of the original complaint herein;

(B) no litigation concerning the controversy has been commenced by any members of the Class;

(C) it appears desirable to concentrate the litigation of claims in this Court because of (i) the substantial number of members (100,000) alleged to be in the Class, virtually all of whom have a last-known residence or business address in New York City; and (ii) the economic advisability of determining the rights of, and any damages to, plaintiff and the other members of the Class in a single action and

(D) the difficulties likely to be encountered in the management of the class actions brought in counts 1 through 4 of this complaint do not appear to be material inasmuch as the number of members of the Class (100,000) is manageable, the names and addresses of each of the members of the Class can be readily obtained from computerized files or other records maintained by defendants; plaintiff is represented by experienced counsel; plaintiff is a professional investigator familiar with many of the matters alleged herein and capable of performing additional investigative work relating to this action; and because of his combined interest in pursuing this litigation and specific information about the matters alleged herein plaintiff is capable of managing the class actions.

Plaintiff

6. Plaintiff, PETER V. KEILLY, resides at
67-80 Exeter Street, Forest Hills, Queens, N.Y. 11375.

Defendants

7. Defendant LLBERT HINKSON, a citizen of the United States, is the Director of the Parking Violations Bureau of New York City, and is being sued herein solely in his individual capacity and not as an official or employee of the Bureau or of New York City. Defendant Hinkson has a business address at Parking Violations Bureau, 475 Park Avenue South, New York, N.Y. 10016 and a residence address at 1910 Arthur Avenue, Bronx, N.Y. 10457.

8. Defendant ABRAHAM D. BEAME, a citizen of the United States, is the Mayor of New York City, and is being sued herein solely in his individual capacity and not as the Mayor of New York City. Defendant Beame has a residence address at Gracie Mansion, East End Avenue, New York, N.Y. and a business address at City Hall, New York, N.Y. 10007.

9. Defendant HARRISON J. GOLDIN, a citizen of the United States, is the Comptroller of New York City, and is being sued herein solely in his individual capacity and not as the Comptroller of New York City. Defendant Goldin has a business address at the Municipal Building, New York, N.Y. 10007 and a residence address at 1020 Grand Concourse, Bronx, N.Y. 10451.

Denial of Civil Rights

10. As his complaint against defendants, plaintiff alleges that defendants and their attorneys, employees and agents have deprived plaintiff of his rights,

privileges and immunities secured by the United States Constitution under color of the laws and statutes of the State and City of New York, and by pursuing a governmental policy, practice, custom and usage which unlawfully deprived plaintiff of such constitutional rights, in violation of § 1983 of the Civil Rights Act (42 U.S.C.A. § 1983). The main thrust of count 1 of plaintiff's complaint is that defendants under color of their respective positions with New York City:

A. have failed to reduce unpaid parking tickets to enforceable judgments within the 2-year period prescribed by law;

B. have collected on alleged "judgments" after expiration of the time during which a judgment to be enforceable must be rendered, a judgment roll created with respect thereto, and entered, and are holding the proceeds of such collections made by themselves and their predecessors, and

C. are attempting to collect on these non-existent and/or unenforceable "judgments" after expiration of the time during which a judgment to be enforceable must be rendered, a judgment roll created with respect thereto, and entered.

11. By virtue of the actions by defendants and their predecessors, and their respective attorneys,

employees and agents, plaintiff has been denied his constitutional rights to due process in the taking of his property, secured by the United States Constitution, in each of the following ways:

A. by demanding that plaintiff pay non-existent and/or non-enforceable "judgments" in purported favor of defendants or their predecessors or governmental agencies represented by them.

B. by actually collecting from plaintiff upon non-existent and/or non-enforceable "judgments" in purported favor of defendants or their predecessors or governmental agencies represented by them.

C. by threatening plaintiff with garnishment, liens and/or other legal proceedings, and refusing to allow plaintiff to renew his motor vehicle registration, to force plaintiff to pay non-existent and/or non-enforceable "judgments" in purported favor of defendants or their predecessors or governmental agencies represented by them.

12. Defendants act and have acted with full knowledge that the purported "judgments" against plaintiff are non-existent and/or unenforceable, and that there was no compliance with the laws of New York State and New York City relating to the creation of any enforceable judgments against plaintiff.

13. Plaintiff has paid approximately \$1,000 in non-enforceable and/or non-existent "judgments" in favor of the New York City Parking Violations Bureau or predecessor during the 6-year period preceding November 19, 1974.

14. Plaintiff is being threatened by employees and/or agents of defendants with collection of approximately \$2,000 of non-enforceable and/or non-existent "judgments" relating to alleged parking violations in New York City.

COUNT 2

(Fraud)

Jurisdiction

15. The jurisdiction of this Court over defendants as to count 2 of this complaint is provided in counts 1, 3 and 4 of this complaint, alleging federal questions, which gives the Court jurisdiction over count 2 based on the doctrine of pendent jurisdiction.

16. As count 2 of this complaint against defendants plaintiff repeats, reiterates and realleges each and every allegation of the paragraphs of the complaint designated 1-14 as if fully set forth herein at length. ;

17. Defendants defrauded plaintiff into making payment of approximately \$1,000 in non-existent and/or unenforceable "judgments".

18. Defendants or their employees, agents or attorneys, or their predecessors, stated or implied that they were collecting legally enforceable "judgments" or other obligations owed by plaintiff when in fact they knew or should have known that defendants had not complied with the law to create any enforceable judgments or other obligations owed by plaintiff.

19. In various notices transmitted to plaintiff by mail or telephone, defendants falsely and maliciously stated or implied:

A. that the amounts for which defendants demanded payment were legally enforceable "judgments" or other obligations of plaintiff; and

B. that plaintiff's failure to pay would result in a lawful denial of the opportunity to renew plaintiff's motor-vehicle registration.

20. The representations in paragraphs 19A and 19B above were false, material and induced plaintiff to rely thereon, to his detriment.

21. Plaintiff was unaware when making said payments to defendants or their predecessors that the alleged "judgments" against or other alleged obligations of plaintiff were unenforceable and/or non-existent.

COUNT 3

(Denial of Civil Rights --
Assessment of Penalties upon Delay in Payment of Judgment)

22. As count 3 of this complaint against defendants, plaintiff repeats, reiterates and realleges each and every allegation of the paragraphs of the complaint designated 1-14 as if fully set forth herein at length.

23. Through the traffic tickets themselves and various notices directed to plaintiff, plaintiff was advised that if he failed to pay the ticket within 7 days or within a specified extended period, he may become obligated to pay, in addition to the fine designed for the alleged parking violation, one or more penalties not to exceed \$25 in the aggregate (hereinafter "Penalties"), which Penalties in various amounts plaintiff did pay, during the 6-year period preceding November 19, 1974, in the aggregate amount of approximately \$700.

24. These Penalties are illegal and their collection is a denial of plaintiff's civil rights, by being a violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution and a violation of the Excessive Fines Clause of the Eighth Amendment to the United States Constitution, and the Civil Rights Act, § 1983 (42 U.S.C.A. § 1983). Section 242 of the N.Y.C. Vehicle and Traffic Law and § 333a-7.0 of Title A of Chapter 4 of the N.Y.C. Administrative Code (enacted by the N.Y.S. Legislature) provide for the Penalties and are unconstitutional.

25. The Penalties are unreasonable and unrelated to the parking violation itself. Furthermore, any delay in payment of a judgment, under acceptable principles of law, should result at best in the assessment of an additional amount (called interest) relating to the period of delayed payment. It is unreasonable for the Penalties to be assessed against plaintiff because of his failure to appear at a hearing or to pay promptly. This is confiscatory and a denial of equal protection. Plaintiff has the right to be required to pay no more than the maximum fine levied against persons who are found guilty of the same offense after a full hearing.

COUNT 4

(Denial of Civil Rights --
Giving Administrative Decisions the Effect of Judgments)

26. As count 4 of this complaint against defendants, plaintiff repeats, reiterates and realleges each and every allegation of the paragraphs of the complaint designated 1-14 and 23-25 as if fully set forth herein at length.

27. The New York Vehicle and Traffic Law and Chapter 40 of the New York City Administrative Code, both enacted by the New York State Legislature, establishing the New York City Parking Violations Bureau removed parking violation hearings and appeals from the courts of New York to the Parking Violations Bureau, an administrative

body, whereby the right to trial by jury, the rules of evidence in the conduct of hearings and appeals, affidavits of military service, and other procedural safeguards were eliminated or denied to alleged parking violators, for the alleged purpose of "streamlining" the administration of parking-violation "justice". Actually, defendants are using a quasi-criminal process to raise substantial amounts of revenue for New York City and placing the burden of this unconstitutional scheme of taxation on the persons who can least afford to pay.

28. At the same time, the administrative determinations of guilt were converted into what purport to be enforceable judgments, as if rendered by courts of the State or City of New York, with the consequence that such alleged judgments become enforceable in other states, affect title to real property, afford a basis for garnishment of wages, afford a basis for denial of renewal of motor-vehicle registrations, affect credit standings and provide the basis for certification as a "scofflaw".

29. Plaintiff alleges that it is a violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution to have administrative decisions by the New York City Parking Violations Bureau as it has been constituted and as it has operated be given the effect of judicial judgments for all or any purposes, without the safeguards provided by the

courts of New York State and New York City, and that for such reasons all alleged "judgments" in favor of the Parking Violations Bureau and/or New York City or predecessors thereto are null and void.

30. Plaintiff alleges that all payments made by him, as an alleged parking violator, upon actual or purported "judgments" for parking violations should be refunded to plaintiff.

PRAYER

WHEREFORE, plaintiff prays:

1. That the activities of defendants be adjudged and decreed to be in violation of § 1983 of the Civil Rights Act (42 U.S.A. § 1983) as to counts 1, 3 and 4, and a fraud as to count 2.

2. That defendants and their attorneys, employees and agents and all persons combining with or acting in concert with them (including officials and employees of the New York State Motor Vehicle Department) or under their direction be permanently restrained and enjoined from:

(a) collecting upon non-existent and/or non-enforceable "judgments";

(b) collecting any fines or Penalties;

(c) preventing alleged parking violators who have not paid fines or Penalties from renewing motor-vehicle registrations; and

(c) otherwise dealing with parking violation fines and/or Penalties as if they had the effect of lawful judgments or other obligations in any way.

3. That plaintiff be permitted to maintain this action as representative of the class of persons described in ¶ 3 of the complaint above (the "Class").

4. That defendants be directed to refund to plaintiff and each of the members of the Class, represented by plaintiff, all of the amounts collected (from November 20, 1968 to November 19, 1974) by defendants and/or their predecessors with respect to alleged or actual parking violations by plaintiff and each of the members of the Class, respectively.

5. That jurisdiction of counts 3 and 4 of this complaint be taken by a three-judge court pursuant to 28 U.S.C.A. § 2281 and 28 U.S.C.A. § 2284.

6. That plaintiff recover his costs and disbursements herein, and that this Court award reasonable attorneys' fees in accordance with § 2000e-5(k) of the Civil Rights Act (42 U.S.C.A. § 2000e-5(k)).


7. That plaintiff have such other and further relief as this Court may deem just and equitable.

Jury Demand


PLEASE TAKE NOTICE that plaintiff DEMANDS A TRIAL BY JURY, pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, of all issues triable by right by a jury.

Dated: November 25, 1974

By


Carl E. Person

By


Walter C. Reid

Attorneys for Plaintiff

Office & P.O. Address:
c/o Carl E. Person
132 Nassau Street
New York, N.Y. 10038

(212) 349-4616

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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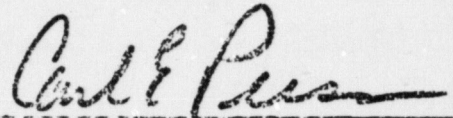
PETER V. KEILEY,	:	74 Civ. 5075 (IBW)
Plaintiff,	:	NOTICE OF MOTION FOR
-against-	:	CONVENING OF
	:	<u>THREE-JUDGE COURT</u>
ELBERT HINKSON, et al.,	:	
Defendants.	:	

-----x

PLEASE TAKE NOTICE that, upon the amended complaint herein (a copy of which is annexed hereto) the undersigned will move this Court, before Honorable Inzer B. Wyatt, United States District Judge, on December 6, 1974 at 2:30 o'clock in the afternoon or as soon thereafter as counsel can be heard, in Room 705, at the Courthouse, Foley Square, in the City, County and State of New York, for the convening of a three-judge court in conformity with 28 U.S.C.A. § 2281 and 28 U.S.C.A. § 2284 for the reason that plaintiff seeks to enjoin the enforcement and execution of § 242 and other sections of the New York Vehicle and Traffic Law and § 883a-7.0 and other sections of Title A of Chapter 40 of the New York City Administrative Code for repugnance to the United States Constitution; and will request that the Chief Judge of the United States Court of Appeals for the Second Circuit be notified pursuant to 28 U.S.C.A. § 2284 of plaintiff's

prayer for injunctive relief in order that the necessary designation of judges for said court may be made.

Dated: New York, N.Y.
November 26, 1974



Carl E. Person



Walter C. Reid

Attorneys for Plaintiff
Office & P.O. Address:
c/o Carl E. Person
132 Nassau Street
New York, N.Y. 10038

TO: All Defendants and
Adrian P. Burke, Esq.,
New York City Corporation Counsel

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
PETER V. KEILEY,

Plaintiff,

-against-

ELBERT HINKSON, et al.,

Defendants.
-----x

: 74 Civ. 5057 (IBW)

: AFFIDAVIT IN
: SUPPORT OF MOTION

STATE OF NEW YORK)

: ss.:

COUNTY OF NEW YORK)

CARL E. PERSON, being duly sworn, does hereby depose and say:

1. I am one of the attorneys for plaintiff, and I am fully familiar with all facts and all prior proceedings had in this action.

2. I make this affidavit in support of plaintiff's motion for the convening of a three-judge court.

3. A copy of a Notice of Violation of the New York City Parking Violations Bureau is annexed hereto as Exhibit A, the form in use as of the filing of the complaint and amended complaint herein.

4. Annexed as Exhibit B hereto is a copy of the law review article referred to in the accompanying "Memorandum in Support of Motion for Convening of Three-Judge Court", dated January 21, 1975. The article, found at 7 Col. J. of Law & Soc. Problems pp.447-465, discusses the numerous constitutional issues presented by the two statutes which plaintiff seeks to have declared unconstitutional.

5. Exhibit C (consisting of pages C-1 through C-11) contains copies of various newspaper articles published after commencement of this action, in

November of 1974. These articles show quite clearly that officials of New York City and others consider enforcement of the parking laws as a means of raising substantial amounts of revenues for New York City TOTALLY UNRELATED TO THE COST OF ENFORCEMENT.

6. Defendant Hinkson and others appear concerned about this suit, particularly count 1 (relating to defendants' failure to file the "judgments" within 2 years). See C-4 and C-5. Defendant Hinkson is shown filing about 500,000 "judgments" in the New York County Clerk's Office, on December 13, 1974, against so-called "scofflaws".

7. Uncollected tickets amount to about \$177,000,000 "at a time when the city needs every dime". p. C-2, News editorial.

8. Of the \$177,000,000 in uncollected parking tickets, \$102,000,000 "represented delinquency penalties over and above the amount of the fines." (p. C-3, 12/4/74 article). This amounts to about 58% of the uncollected amount. In other words, the unpaid penalties are about 140% of the amount of unpaid fines.

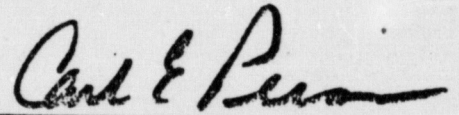
9. That the parking fines and penalties are considered a source of revenue ("profits") by New York City may be seen from the articles entitled "Troy Submits an Amnesty Plan" (C-2) and "City Studies Parking Fines for Fast Cash" (C-1). Also, see "City has \$100M Glare in Eye as It Liens against Scofflaws" (C-5) and (with respect to Mt. Vernon, operating under the same New York Statute) "Mt. Vernon Scofflaw Campaign Brings \$25,000 a Month in Fines" (C-9).

10. A slowdown by Traffic Department employees caused a "revenue loss to the city at \$300,000 a day" (C-3). Also, "in 1973 the meter and control agents had handed 1,841,759 summonses, worth \$40-million to the city in revenues", according to Carol Bellamy, President of Local 1182 of the Communications Workers of America. It "represents the 600 parking enforcement agents (meter maids) and

traffic control agents". (C-3). She added that "the city should collect \$80-million this year because the agents now hand out tickets for 50 different violations as against only seven kinds in 1973". (C-3). This is how the Parking Violations Bureau proceeds with virtually no legislative criteria or standards, in the pursuit of revenues for New York City. The Communications Workers even are demanding that they be cut in on some of the "profits" earned by New York City through their efforts at handing out summonses. (News article presently unavailable)

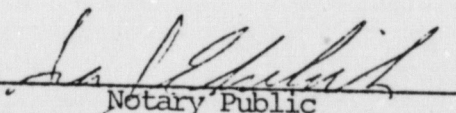
11. The amounts of money being raised by New York City through its "enforcement" of parking laws are so gigantic that City Council Finance Committee Chairman Matthew J. Troy, Jr. proposed during November, 1974 to give away the \$102 in uncollected penalties through an amnesty program. (C-1 and C-2.)

12. In many other ways the Parking Violations Bureau is acting unconstitutionally, taking the property of persons without due process of law. Affidavits will be supplied after determination of this motion to show that the application of the statutes in question by the Parking Violations Bureau of New York City is unconstitutional. Cars are towed away and ransoms paid without any notice or hearing, for example. Motorists are stopped while in their cars and the cars are taken away from them, without notice or hearing. And other constitutional horror tales will be related, as well.



Carl E. Person

Subscribed and sworn to before me
this 21st day of January, 1975.



Notary Public

IRA J. EHRLICH
NOTARY PUBLIC, State of New York
No. 31-4600212
Qualified in New York County
Commission Expires March 30, 1976

Park Violations Bureau

City of New York

TO PLEAD NOT GUILTY OR
GUILTY WITH AN EXPLANATION
EITHER

BRING this SUMMONS and all PROOF to
any PVB HEARING OFFICE and have a
hearing within 7 days, (schedules
permitting)

OR

FILL IN the following:

- DATE: (weekday 31-40 days after the issue date of this summons)
- HOUR: 9 - 11 - 1 - 3 (Circle one)
- LOCATION: Bronx, Brooklyn, Queens, Manhattan, Richmond (Circle one)
- CHECK the "not guilty" or "guilty with an explanation" box on the PL-5-A FORM
- WRITE your name and address on the plea form
- MAIL to:
PARKING VIOLATIONS BUREAU
P.O. BOX 152, PECK SLIP STATION
NEW YORK, N.Y. 10038

This summons will be returned confirming the hearing date you have selected or fixing a new date if your choice is not available.
BRING this SUMMONS and all PROOF (evidence, witnesses, etc.) with you to your HEARING.

TIME TO ACT

A plea must be entered and the summons returned WITHIN SEVEN (7) DAYS of the date this summons was issued. FAILURE to do so may result in additional PENALTIES up to \$25.00 and may lead to a default judgment and possible denial of vehicle registration renewal.

Check the appropriate box and mail to: Parking Violations Bureau, P.O. Box 70, Peck Slip Station, New York, N.Y. 10038, if you have either of the following defenses.

- ☐ Special Vehicle Identification _____ Traffic Dept. Ident. No.
- ☐ Fast Meter _____ Meter No.

(NOTE: You must appear in person for a hearing if you wish to plead a ticket for a jammed or inoperable meter since these are not justifiable plea-2a N.Y.C. Traffic regulations (§ 93) prohibit parking at inoperable meters)

PLEA FORM

I hereby plead

- ☐ GUILTY
- ☐ GUILTY WITH AN EXPLANATION
- ☐ NOT GUILTY

NAME (Print)

ADDRESS

CITY

SIGNATURE

STATE

ZIP NO.

DATE

HEARING OFFICES

LOCATIONS:

- Bronx
1910 Arthur Avenue
7th Floor
- Brooklyn
44 Court Street
5th Floor
- Manhattan
475 Park Avenue South
(at 32nd Street) 6th Floor
- Queens
1 LeFrak City Plaza - 2nd Floor
(Junction Blvd & Long Island Expressway)
- Richmond
30 Bay Street

DAILY HOURS:

Monday to Friday 9am to 4:30 pm

EVENING HOURS:

Only on nights indicated below from 6:30 pm

- Bronx
Brooklyn
Manhattan
Queens
- Thursday
Tuesday
Monday
Wednesday

SUMMONS
NOTICE OF VIOLATION

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LAST NAME FIRST NAME INITIAL

STREET ADDRESS

CITY (as shown on license) STATE ZIP NO.

LICENSE OR IDENTIFICATION NUMBER

STATE	TYPE OF LICENSE	DATE EXPIRES	SEX	DATE OF BIRTH	OPERATOR ORNS VEHICLE
				MO DAY YR	<input type="checkbox"/> YES <input type="checkbox"/> NO

THE OPERATOR OR REGISTERED OWNER OF VEHICLE DESCRIBED BELOW

PLATE TYPE	STATE	DATE EXPIRES
		MO DAY YR

YEAR AND MAKE OF VEHICLE COLOR BODY TYPE

THE PERSON DESCRIBED ABOVE IS CHARGED AS FOLLOWS

OF OCCURRENCE PRECINCT OF OCCURRENCE

COUNTY DATE TIME ☐ AM ☐ PM IN VIOLATION OF

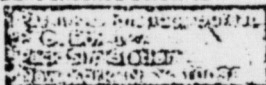
TRAFFIC REGULATIONS VEHICLE AND TRAFFIC LAW ADMINISTRATIVE CODE OTHER LAW

A PARKING CODE PARKING METER NO. FEE FROM METER

YOU MUST ACT WITHIN 7 DAYS

TO PAY FINE

Check guilty on the plea form in the bottom middle.
Mail this summons within 7 days with check or money order for the amount checked below to:



Write the summons number and plate number on the front of your check or money order

TO PLEAD NOT GUILTY OR GUILTY WITH AN EXPLANATION

See back of summons

SCHEDULED FINE ☐ \$10 ☒ \$15 ☐ \$25 ☐ \$35 ☐ OTHER

Failure to plead on time may cause additional penalties up to \$25 and may lead to a default judgment.

I PERSONALLY OBSERVED THE COMMISSION OF THE OFFENSE CHARGED ABOVE. AFFIRMED UNDER PENALTY OF PERJURY ON DATE OF OFFENSE.

NAME/SIGNATURE OF COMPLAINANT

SQUAD

COMMAND

COMPLAINANT'S NAME (PRINTED)

TAX REGISTRY NO.

AGENCY

PARKING VIOLATIONS BUREAU

Exh. 1

A

Unburdening the Criminal Courts? New York City's Parking Violations Bureau

The judicial processes for resolving cases and controversies have remained essentially static for two hundred years. This is not necessarily bad, but when courts are not able to keep up with their work, it suggests the need for a hard new look at our procedures.¹

Chief Justice Warren E. Burger's first State of the Judiciary address introduced a note of urgency to the perennial topic of alleviating the crushing caseload of the nation's courts. At the time he spoke New York City, the criminal courts of which are as congested as any judicial system, was embarking on an experiment of some promise. The concept was to transfer subject matter of a petty nature from the jurisdiction of the criminal courts to an administrative agency. Thus was New York's Parking Violations Bureau (PVB) constituted as the nation's first administrative tribunal for this particular chore of municipal housekeeping.²

The PVB operation has not left New York's Criminal Court idle, by far, and the possibility of further withdrawal of presently "criminal" subject matters is strong. However, departure from traditional court procedures in the interest of streamlining an agency tribunal's operation raises questions as to whether vital safeguards are thereby destroyed. Administrative adjudication as a tool of more effective municipal governance obviously need not be limited to parking violations. More complex issues and more serious property interests in other subject matters though, may require somewhat more elaborate procedures than the PVB currently offers.

Indeed, the PVB itself — which at this writing has not yet been tested in court — may be deficient in the expediency of some of its procedures. This article examines the functional efficiency of the agency operation in comparison with its predecessor under the court system. Attention then focuses on the problematic aspects of PVB procedure and suggestion is made of certain modifications seemingly compelled by due process and evidentiary considerations.

¹ Burger, *The State of the Judiciary* — 1970, 56 A.B.A. J. 929, 933 (1970).

² Administrative Code of the City of New York, ch. 40, § 883a-1.0 (1970).

I. PARKING VIOLATIONS UNDER AGENCY AND COURT

Whether windshield wipers were originally designed to clasp parking tickets as well as to fight incontinent weather is unknown, but today in New York City for many vehicles the former use is more frequent. The affixed summons' fine ranges from ten dollars for a meter violation to twenty-five dollars for parking in restricted areas.³ Large type advises the motorist that he has one week in which to mail in the money or to apply for a hearing. From this point on he is in the domain of the PVB.

A. THE PARKING VIOLATIONS BUREAU IN OPERATION

Paperwork of the agency is highly computerized; the procedural steps of each plea or default are ticked off with clocklike inexorability. To date there have been no catastrophic quirks on the computer's part and the overall error margin in the initial six month period of operation was four percent.⁴ A major source of this error figure, now corrected, was a misprogramming which caused the machine to ignore payment from certain vehicle license number combinations.⁵ Another problem is the fact that the state issues the same plate numbers for different types of vehicles, e.g. motorcycles and passenger cars, and the computer may sometimes refer to the wrong category in tracing home addresses. Before entry of a default judgment, however, a full check for such error is made.⁶

Of the 100,000 parking summonses issued weekly, about sixty-one percent are ignored.⁷ Scofflaws must contend with the circuitry of the PVB computer. Three weeks after issuance of the summons they are mailed a second notice informing them that the fine is raised by five dollars and that they have a week to pay or to plead.⁸ Should there be no response, in another three weeks a second letter increases the fine by fifteen dollars and serves notice of an impending default judgment.⁹ Judgments are entered in the Civil Court of New York City¹⁰ for purposes of execution, although the PVB's enabling statute purports to give effect to its determinations without court

3. *Id.*

4. Interview with Anthony H. Atlas, Director, Parking Violations Bureau, in New York City, Feb. 16, 1971 [hereinafter cited as Interview with Atlas].

5. *Id.*

6. *Id.*

7. Memorandum from Anthony H. Atlas, Director, Parking Violations Bureau to Constantine Sidamon-Eristoff, Transportation Administrator, Jan. 12, 1971, on file with the *Columbia Journal of Law and Social Problems* [hereinafter cited as Memorandum from Atlas].

8. Interview with Atlas, *supra* note 4.

9. *Id.*

10. Memorandum of the N.Y. Supreme Ct., Appellate Division, First Department, August 1970.

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action.¹¹ The Civil Court judgments are executed by City Marshals — public officers whose compensation is a fee of five percent of every judgment collected.¹² After a warning letter, the marshals are empowered to garnish the salary and property of the judgment debtor.¹³ If a motorist accumulates three outstanding judgments, the PVB computer informs its fellow computer in the State Department of Motor Vehicles not to renew the offending vehicle's registration.¹⁴

Pursuit by the PVB does not end at the state border. About twenty-five percent of the parking tickets issued in New York City are given to out of state vehicles.¹⁵ Addressees of New Jersey and Connecticut violators are obtained from these states and notices are sent by certified mail.¹⁶

Of the thirty-nine percent of car owners who reply to their summons, eighty-four percent mail in a check with a guilty plea.¹⁷ The remainder, representing about six percent of all summonses issued, seek a hearing. In the PVB's first six months of operation, beginning July 1, 1970, over 110,000 summonses were contested in hearings before the Bureau's 160 examiners.¹⁸ Respondents are allowed to choose the time and borough office most convenient to them. Although they may be represented by counsel, only about one percent exercise the right.¹⁹ Three out of four respondents pleaded guilty at the hearing but offered an explanation in mitigation.²⁰ In the month of December, 1970, the hearing disposition breakdown was: eight percent dismissed, nine percent reduced fine, eighty-three percent full fine imposed.²¹

The daily revenue in December was just under \$112,000 — the City's Bureau of the Budget projected revenue for the first fiscal year, which includes income from the backlog of cases heard in the Criminal Court, is thirty million dollars.²² In December, when the PVB mechanism reached full tune, it cost nine cents to collect every dollar.²³ With a first-year expense budget of \$3,475,751 and expen-

11. Administrative Code of the City of New York, ch. 40, § 88.3a-3.0(c) (1970).

12. Interview with Atlas, *supra* note 4.

13. N.Y. JUDICIARY COURT ACTS, Art. 15, § 1504 (McKinney's 1963). At this writing the default judgment collection procedure had just begun and figures on its effectiveness were unavailable.

14. N.Y. VEHICLE AND TRAFFIC LAW, §§401(5)(a) and (b), 514(c)(4)(a)(b)(c) (McKinney's 1970).

15. Interview with Atlas, *supra* note 4.

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.*

21. Memorandum from Atlas, *supra* note 7.

22. *Id.*

23. *Id.*

within six months in 1971, 251,252 the agency met expectations in cost effectiveness. The total PVB staff, excluding hearing examiners, numbers under two hundred persons.

The PVB seeks to present an image of informality and accessibility to the public. The respondent sits across a desk from the examiner. As a layman, he is allowed to tell or illustrate his case as he wishes, without regard to the rules of evidence.²⁴ Under PVB regulations, the police officer or meter maid who issued the ticket may be called to testify in the discretion of the hearing examiner,²⁵ but in practice the witness is almost never present.²⁶ Expedition is a fundamental policy, and hearings are generally over in two to five minutes.²⁷ Adjournment to gather evidence is granted on discretion.²⁸

Uniformity of decision in similar factual situations is not stressed -- examiners are issued no formal written guidelines other than the Traffic Regulations.²⁹ Accordingly, a good measure of discretion and demeanor assessment is allowed the individual examiner, who is a practicing private attorney of at least five years experience,³⁰ sitting once every one or two weeks.³¹ However, the Bureau has not completely abandoned the concept of uniformity of decision. The record of dispositions of each examiner is reviewed daily by one of the fourteen senior examiners and guidance is given -- though decisions are not overturned in this process.³²

Of the 150,000 cases tried within the first seven months, 350 were reviewed within the agency by a three-member board.³³ About half of the reviewed cases were reversed.³⁴ All initial hearings are tape recorded. On appeals, the tapes are replayed and respondents need not reappear.³⁵ The agency does allow new evidence to be introduced in appeals,³⁶ contrary to its regulations³⁷ and enabling

24. Administrative Code of the City of New York, ch. 40, § 883-a-6.0(b)(3) (1970).

25. Rules and Regulations of the Parking Violations Bureau, Art. 6.08 (1970).

26. See notes 57, 112 *infra*.

27. Interview with Atlas, *supra* note 4.

28. *But see* note 59 *infra* and accompanying text.

29. Interview with Atlas, *supra* note 4.

30. Administrative Code of the City of New York, ch. 40, § 883-a-2.0 (d) (1970).

31. Interview with Senior Hearing Examiner Howard Fisch, in New York City, Feb. 16, 1971. A full day's work earns the examiner \$75.00.

32. *Id.*

33. Interview with Atlas, *supra* note 4. Review boards are comprised of senior hearing examiners. To avoid prejudice they are usually drawn from Bureau offices in boroughs other than the one for which they hear appeals.

34. *Id.*

35. *Id.*

36. *Id.*

37. Rules and Regulations of the Parking Violations Bureau, Art. 9.01(b) (1970).

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statute,³⁸ on a policy of fairness to the uncounseled appellants.³⁹

After exhausting the Bureau's appeal procedures, judicial review can be sought pursuant to article seventy-eight of the New York Civil Practice Laws and Rules.⁴⁰ New York State has no administrative procedure act setting one standard for judicial review which would be applicable to determinations of all state agencies. The enabling statute for a specific agency usually prescribes that a finding of substantial supporting evidence will suffice to uphold administrative action. In the case of judicial review of PVB proceedings, however, the legislature has directed the courts to apply the stricter "preponderance of the evidence" standard.⁴¹

Thirty hearings under four examiners were observed in preparing this article. In four of these cases the respondent was appearing for the second or third time, after previous adjournments to allow for the gathering of evidence. While total waiting time varies for different hours of the day and days of the week, on these midweek mornings respondents waited one to two hours before their case was heard. Nearly all of those reappearing had been sent after simple documentary evidence such as a garage bill or stolen car report. In four cases involving not guilty pleas, the presence of the officer probably could have settled factual disputes, such as whether signs were down on 58th Street or whether meters were put in after the car was parked. Instead, these cases were decided diversely on demeanor. There are clearly areas of "hard law", such as the unforgivability of parking by a fire hydrant. However, in areas of discretion, the different examiners showed slightly different predilections to mercy.

Nevertheless, in the remainder of the cases -- which was the majority -- the dispositions seemed warranted on the facts as stated by the respondent. Although those respondents who were fully fined on not guilty pleas tended to display outward dissatisfaction, only one of the four examiners informed them of their right of appeal. A clerk in the payment section has the forms for appeal but apparently does not broach the subject unprompted.

B. COURT SYSTEM COMPARED

Where parking violations were under the jurisdiction of the Criminal Court the story and the numbers were different. The scof-

38. Administrative Code of the City of New York, ch. 40, § 883a.8 (b)(1)-(3).

39. It would seem that no objection will be raised to this schorade on behalf of respondents, although the practice is technically in violation of the enabling statute.

40. N.Y. Civil Practice Laws & Rules, Art. 78, § 7801 (McKinney's 1963).

41. Administrative Code of the City of New York, ch. 40, § 883a.6 (b)(2). See discussion of the substantial evidence standard in *Kopeck v. Buffalo Brake Beam*, 304 N.Y. 65, 101 N.E.2d 12 (1952).

flaw rate in the court's noncomputerized system was seventy-one percent -- the ten percent decrease in scofflaws under the PVB⁴² is probably attributable to its publicized image of relentless efficiency. Defendants were not allowed to choose their own trial times, and contesting the summons generally entailed a six month wait as compared with the month to six weeks under the PVB.⁴³ Frequently a harried judge would run through three hundred cases in a four hour morning session,⁴⁴ whereas PVB examiners hear about forty cases a day.⁴⁵ At crowded night sessions those entering pleas of "guilty with an explanation" at times were simply lined up to have their fines reduced without hearing the explanation.⁴⁶ The regularity of reduced fines on pleas of guilty in some courts gave rise to "hawks", corridor attorneys who promised reductions for a small fee and presented a fistful of summonses to the court.⁴⁷ In pleas of not guilty, the police officer who issued the ticket was required to be present in the court. Under present PVB procedures, such attendance is not required,⁴⁸ at an estimated saving of up to 200,000 police man-hours per year.⁴⁹

The average fine in the Criminal Court in 1969 was \$11.14 as compared with an increase by fifty percent during the PVB's first six months to \$16.67.⁵⁰ Because the same fine schedule applied in both systems and the number of dismissals declined only slightly under the PVB,⁵¹ these figures indicate much fewer fine reductions by the agency.⁵² In the last two months of 1969 the Criminal Court collected \$2,261,486; in the month of December alone the PVB brought in \$2,457,958.⁵³ While an exact overall cost comparison is not possible because the courts operate in municipal facilities and the PVB leases commercial space, the cost of adjudicatory personnel in the agency is about one-third that of Criminal Court judges.⁵⁴

42. Interview with Atlas, *supra* note 4.

43. *Id.*

44. N.Y. Times, Jan. 31, 1971, at 55, col. 1.

45. *Id.*

46. Address by Anthony H. Atlas, New York University Law School, Feb. 12, 1971 [hereinafter cited as Address by Atlas].

47. Interview with Atlas, *supra* note 4.

48. Administrative Code of the City of New York, ch. 40, § 883a-6 (b)(4) (1970).

49. Address by Atlas, *supra* note 46. New York Mayor John V. Lindsay has estimated the manhour savings over ten months to be equivalent to adding 156 police officers to the force, N.Y. Times, May 10, 1971, at 35, col. 1.

50. Memorandum from Atlas, *supra* note 7.

51. See note 115 *infra* and accompanying text.

52. Memorandum from Atlas, *supra* note 7.

53. *Id.*

54. *Id.*

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II. PROCEDURAL PROBLEMS

Computer aside, a key element of the PVB's disposition efficiency is its use of the summons as a *prima facie* case, thereby eliminating the need for an appearance by the issuing police officer.⁵⁴ Under the agency regulations, the officer may be subpoenaed by the respondent only upon a showing before the hearing examiner of "good cause and need therefore."⁵⁵ In practice this meant that in the first six months of operation only twenty-eight appearances by policemen were ordered in the thirty thousand hearings on not guilty pleas, as against the thirty thousand appearances by officers who would have been called under the former Criminal Court procedure.⁵⁷ This PVB procedure has not yet been challenged in court, but a constitutional attack on various theories may be expected.

At the threshold it may be argued that the regulation⁵⁸ leaving the question of attendance by the issuing policeman exclusively to the hearing examiner's discretion is *ultra vires* the enabling statute. That statute provides that, "[t]he hearing officer may, in his discretion, or at the request of the person charged, issue a subpoena to compel the appearance at a hearing of the officer. . . ."⁵⁹ (emphasis added). Arguably the legislative intent, as indicated by the use of the disjunctive conjunction "or", was to grant to the respondent the right to call the witness independent of the discretion the examiner may exercise. However, the Bureau reads the statutory language to necessitate the examiner's permission before the issuing officer can be called.⁶⁰

Assuming *arguendo* that the PVB's construction is correct, serious objections to the practice may be advanced on evidentiary and due process grounds.

A. QUALITY OF EVIDENCE: LEGAL RESIDUUM RULE

The absence of the witness may defeat an evidentiary requirement of New York administrative law. The legal residuum rule, first announced by the New York Court of Appeals in *Carroll v. Knickerbocker Ice Co.*,⁶¹ and followed in subsequent cases,⁶² requires a

55. Administrative Code of the City of New York, ch. 40, § 883a.4(c)(1) (1970).

56. Rules and Regulations of the Parking Violations Bureau, Art. 6.08 (1970).

57. N.Y. Times, Jan. 31, 1971, at 55, col. 1.

58. Rules and Regulations of the Parking Violations Bureau, Art. 6.08 (1970).

59. Administrative Code of the City of New York, ch. 40, § 883a.4(c)(1) (1970).

60. Rules and Regulations of the Parking Violations Bureau, Art. 6.08 (1970).

61. 218 N.Y. 435, 173 N.E. 507 (1916).

62. See notes 67-70, 72, 73 *infra* and accompanying text.

reviewing court to set aside an administrative finding based on hearsay unless the finding is corroborated by evidence which would be admissible in a jury trial. The theoretical purpose of the rule is to strike a balance between the need to allow administrative agencies to come to determinations expediently on informal evidence and the need of reviewing courts to retain standards of control over proceedings that may go astray in their informality.⁶³ The rule tests the quality of the evidence and, as such, is additional and supplementary to statutory quantitative "substantial" or "preponderance" standards.⁶⁴ Thus, although the statutory release of the PVB from the exclusionary rules of evidence⁶⁵ is unexceptional,⁶⁶ the question remains whether the agency may base its decisions in contested cases on the hearsay summons document alone.

There appears to be no reason why the residuum rule should not be raised in regard to PVB proceedings. Court of Appeals cases in the wake of *Knickerbocker* show the rule focused on a wide range of subject matter: workmen's compensation claims,⁶⁷ labor relations,⁶⁸ state employee dismissal⁶⁹ and denial of a certificate of eviction.⁷⁰ There is nothing in New York decisional law to indicate express abandonment of the rule,⁷¹ although it is rather infrequently raised. Recent applications include a 1967 proceeding to review a determination of the Commissioner of Health assessing a penalty against a physician for alleged violations of the Public Health Law. The Appellate Division remanded on the ground that the hearsay statements involved "lacked competency and sufficient probative force"

63. Note, *Weight to be Given Hearsay Evidence by Administrative Agencies: The Legal Residuum Rule*, 26 B.K.L.Y.N. L. REV. 265, 276 (1961).

64. *Kopec v. Buffalo Brake Beam Co.*, 304 N.Y. 65, 106 N.E.2d 12 (1952).

65. Administrative Code of the City of New York, ch. 40, § 883a-6 (Oct. 13) (1970).

66. *Carroll v. Knickerbocker Ice Co.*, 218 N.Y. 435, 137 N.E. 507 (1916).

67. *Altshuler v. Bressler*, 289 N.Y. 463, 46 N.E.2d 886 (1943); *Kopec v. Buffalo Brake Beam Co.*, 304 N.Y. 65, 106 N.E.2d 12 (1952); *Doca v. Federal Stevedoring Co.*, 308 N.Y. 44, 123 N.E.2d 632 (1954).

68. *N.Y. State Labor Relations Board v. Select Operating Corp.*, 183 Misc. 480, 49 N.Y.S.2d 294 (Sup. Ct. Spec. Term, 1944).

69. *Reynolds v. Triborough Bridge & Tunnel Authority*, 276 A.D. 388, 94 N.Y.S.2d 841 (1951).

70. *Pulera v. McGoldrick*, 133 N.Y.S.2d 492 (1954).

71. The rule has its critics and doubters. Professor Wigmore labeled the rule "not acceptable" because it rests upon the assumption "that this 'residuum of legal evidence' which is to be indispensable, will have some necessary relation to the truth of the finding. But the 'legal' rules have no such necessary relation." J. WIGMORE, EVIDENCE § 4(b) (3d ed. 1940). Professor Davis finds it an ambiguous presence:

Just as the law of the federal courts is lacking in clarity concerning acceptance or rejection of the residuum rule, the law of many individual states cannot be classified as either for or against the residuum rule.

K. DAVIS, ADMINISTRATIVE LAW TEXT § 14.12 (1959).

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standing alone to sustain a determination.⁷² The nature of the insufficient evidence here was a written report of a Department of Health investigator who was not produced for cross-examination. In 1966, a New York Supreme Court applied the residuum test to reverse the grant of a liquor license after an administrative hearing.⁷³ The hearsay evidence relied on as the sole basis of the decision was the testimony of biased witnesses who claimed the existing liquor store on the block was unable to handle its business volume.

Even if the legal residuum doctrine is found applicable to the narrow factual inquiries in PVB hearings, the summons may arguably be competent evidence under either of two exceptions to the hearsay rule. It may qualify as a "certificate or affidavit of a public officer."⁷⁴ This doctrine was raised by a Court of Special Sessions as an alternative ground, or arguably dictum, in a decision based on a provision of the Code of Criminal Procedure which admitted an affidavit charging a violation of New York City's building code without requiring appearance by the issuing inspector.⁷⁵ However, this decision was affirmed without opinion and the alternative theory is not necessarily valid. The summons may also fall within the "business records"⁷⁶ exception to the hearsay rule. This rule covers records made in the regular course of "professions, occupations and callings of every kind."⁷⁷

It is uncertain whether a "residuum" which is an exception to the hearsay rule will satisfy the legal residuum test. It may also be

72. *Fridman v. Ingraham*, 28 A.D.2d 5, 280 N.Y.S.2d 865 (Sup. Ct. A.D., 1967).

73. *Vleck Inc. v. Klem*, 50 Misc. 2d 622, 271 N.Y.S.2d 64 (1966).

74. N.Y. CPLR, Rule 4520 (McKinney's 1963).

Where a public officer is required or authorized, by special provision of law, to make a certificate or an affidavit to a fact ascertained, or ascertained by him in the course of his official duty, and to file or deposit it in a public office of the state, the certificate or affidavit so filed or deposited is prima facie evidence of the facts stated.

75. *People v. Lederle*, 285 App. Div. 974, 139 N.Y.S.2d 915, *aff'd mem.*, 309 N.Y. Sup. 131 N.E.2d 284 (1955).

76. N.Y. CPLR, Rule 4518(a) (McKinney's 1963):

Any writing or record, whether in the form of an entry in a book or otherwise, made as a memorandum or record of an act, transaction, occurrence or event, shall be admissible in evidence in proof of that act, transaction, occurrence or event, if the judge finds that it was made in the regular course of any business and that it was the regular course of such business to make it, at the time of the act, transaction, occurrence or event, or within a reasonable time thereafter. All other circumstances of the making of the memorandum or record, including lack of personal knowledge by the maker, may be proved to affect its weight, but they shall not affect its admissibility. The term business includes a business, profession, occupation and calling of every kind.

77. *Id.*

questioned whether a parking ticket is within the general principle of hearsay exceptions that "the statement offered is free enough from the risk of inaccuracy and untrustworthiness, so that the test of cross-examination would be a work of supererogation."⁷⁸ Indeed, if the residuum rule is a valid doctrine it would not seem that a ticket prepared solely for the purpose of prosecution is a proper basis for decision even if technically within an exception to the hearsay rule. The policy of the rule, after all, is to guard against undetectable injustices, and if the ticket alone proves liability there is theoretically nothing to forestall arbitrary issuance of summonses.

B. DUE PROCESS

The essential issue under the following arguments is whether the absence of the officer, the witness, constitutes a deprivation of property without due process of law prohibited by the fourteenth amendment. The danger to minimal fairness presented by refusal of the right to confrontation and cross-examination is compounded by the tribunal's treatment of the summons alone as a prima facie case.⁷⁹ Under the procedure followed when the courts had jurisdiction the testimony of the officer bore the burden of establishing a prima facie case.⁸⁰ The PVB's use of the prima facie device in conjunction with the absence of the witness means that the contesting respondent has a substantially narrower margin in which to establish his case in that there is no opportunity to overcome the officer's demeanor as there was in the courts.

1. *Equal Protection.* At the outset, residents of New York City might complain that the existing overall scheme for processing parking tickets is violative of equal protection guarantees. However, the New York legislature's decision to allow New York City to classify parking violations as civil infractions while retaining misdemeanor status⁸¹ (which under criminal procedure necessitates the presence of the officer at the hearing) for the same conduct in the rest of the state does not present a constitutional issue under the fourteenth amendment. In *Salsburg v. Maryland* the Supreme Court held that the Amendment's equal protection clause was not violated by a Maryland statute which made evidence obtained by illegal search admissible in one specific county in prosecutions for gambling misdemeanors.⁸² The Court stated, "[t]he Equal Protection Clause

78. J. WIGMORE, EVIDENCE § 1420 (3d ed. 1940).

79. Administrative Code of the City of New York, ch. 40, § 883a-4.0(a) (1970).

80. Interview with Judge Milton Shalleck in New York City, Apr. 1, 1971.

81. N.Y. VEHICLE AND TRAFFIC LAW § 155 (McKinney's 1970).

82. 346 U.S. 545 (1954).

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relates to equality between persons as such rather than between areas."⁸³ Quoting from an earlier case, *Missouri v. Lewis*,⁸⁴ the Court explained:

There is nothing in the Constitution to prevent any state from adopting any system of laws or judicature it sees fit for all or part of its territory. . . . Equal protection means that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or classes of persons in the same place and under like circumstances.⁸⁵

Thus, there would appear to be no equal protection objection to the administrative adjudication provided New York City residents for their parking violations.

2. *Right to Cross-examination.* The right to confront and cross-examine witnesses has been held applicable to various administrative proceedings by the United States Supreme Court.⁸⁶ A dozen years ago in *Greene v. McElroy*,⁸⁷ the Court required a federal security clearance board to provide opportunity for confrontation and cross-examination. It noted:

Certain principles have remained relatively immutable in our jurisprudence. One of these is that where government action seriously injures an individual . . . the evidence used to prove the Government's case must be disclosed to the individual. . . . We have formalized these protections in the requirements of confrontation and cross-examination. . . . This Court has been zealous to protect these rights from erosion. It has spoken out not only in criminal cases. . . but also in all types of cases where administrative and regulatory actions were under scrutiny.⁸⁸

The latest application by the Court of *Green* was *Goldberg v. Kelly*,⁸⁹ striking down a New York City administrative procedure which did not give welfare recipients the opportunity to appear, confront and cross-examine witnesses in hearings to terminate existing benefits. In so doing, the Court cited *Greene's* strong language quoted above. However, *Goldberg* also noted that:

83. *Id.*

84. 101 U.S. 22 (1879).

85. 346 U.S. at 551.

86. *Morgan v. United States*, 304 U.S. 1, 19 (1937) (setting maximum stockyard rates); *Carter v. Kubler*, 320 U.S. 243, 247 (1943) (property appraisal pursuant to bankruptcy); *Rally v. Pinkus*, 338 U.S. 269, 275 (1949) (mail fraud injunction); *Willner v. Committee on Character and Fitness*, 373 U.S. 96, 103 (1963) (disbarment).

87. 360 U.S. 474 (1959).

88. *Id.* at 496-97.

89. 397 U.S. 254 (1970).

consideration of what procedures due process may require under any given set of circumstances must begin with a determination of the precise nature of the government function involved as well as of the private interest that has been affected by government action.⁹⁰

Since both *Greene* and *Goldberg* involved the potential loss of the livelihood of the litigant, and no case involving a petty fine has been found, it is not at all certain that the Court will find cross-examination constitutionally necessary in PVB hearings — although its broadest language suggests the possibility.

In the last few decades the New York Court of Appeals has required cross-examination in administrative proceedings for permission to dig a commercial well⁹¹ and to receive a civil service salary increase,⁹² as well as in a proceeding to revoke a cabdriver's license.⁹³ The language in these cases seems to condition the right to cross-examination not on the seriousness of the property interest, but rather on fundamental fairness. In 1912, the author of a frequently-cited treatise on New York administrative adjudication surveyed earlier cases⁹⁴ and concluded:

[T]he normal practice should be for the agency to produce for cross-examination, at least upon request, the author of a report, certificate, or other written statement received in evidence; and this whether or not the statement in question is legally competent within the exception to the hearsay rule.⁹⁵

Still, the cases furnish no definite guide to what will be required in a particular instance, and it is perhaps significant that most decisions requiring cross-examination have involved a livelihood interest.

The right to cross-examination was most recently applied in a review of the Commissioner of Health's penalty assessment (five hundred dollars on five charges) against a physician for alleged violations of the Public Health Law. In that case, *Erdman v. Ingraham*,⁹⁶ the Appellate Division stated, "it is well settled that a

90. *Id.* at 263, quoting from *Cafeteria & Restaurant Workers Union v. McElroy*, 367 U.S. 886, 895 (1961).

91. *In re N.Y. Water Service Corp. v. Water Power & Control Comm'n*, 283 N.Y. 23, 27 N.E.2d 221 (1940).

92. *In re Heaney v. McGoldrick*, 286 N.Y. 38, 35 N.E.2d 641 (1954).

93. *In re Hecht v. Monaghan*, 307 N.Y. 461, 121 N.E.2d 421 (1954).

94. *In re Magna*, 258 N.Y. 82, 179 N.E. 700 (1932); *in re Greenbaum*, 201 N.Y. 343, 71 N.E. 833 (1911); *People ex rel. Yates v. Mulholland*, 245 App. Div. 146, 281 N.Y.S.2d 216 (1973); *in re Village of Saratoga Springs v. Saratoga Gas, Electric, Light & Power Co.*, 191 N.Y. 107, 85 N.E. 611 (1904).

95. R. BENJAMIN, *ADMINISTRATIVE ADJUDICATION IN THE STATE OF NEW YORK* 507 (1912).

96. 28 App. Div. 2d 5, 280 N.Y.S.2d 865 (1967).

fair hearing on the administrative level requires that a party be given the opportunity of cross-examination of witnesses giving material testimony which may be used against him."⁹⁷ The case is significant since no question of license impairment, i.e., no livelihood interest, was involved.

It is unclear from the case law whether the right to cross-examination would extend to a hearing on a parking fine. It is arguable that a maximum fifty dollars liability⁹⁸ is not a sufficiently serious property interest to justify extension as weighed against administrative efficiency and maximum use of police man-hours. It is also to be noted that in a large proportion of cases under the Criminal Court system the testifying officer was unable to remember the circumstances and read from the summons as a recorded recollection⁹⁹ - although not infrequently his credibility was defeated.¹⁰⁰ But from the standpoint of the individual who believes the ticket plainly misstates the facts, the absence of the witness may be crucial. This is especially so when, as here, the loss of the right to cross-examine is accompanied by the establishment of a prima facie case against the driver on the basis of the ticket alone.

3. *The No-Evidence Test.* The tribunal's reliance on the hearsay summons solely against the sworn testimony of the car owner may run afoul of the "no evidence" concept laid down by the Supreme Court in *Thompson v. Louisville*.¹⁰¹ In that case a municipal police court imposed a twenty dollar fine for loitering upon a cafe patron who had told arresting police officers he was awaiting a bus home. In paraphrasing the municipal statute's criteria, the Court said,

There simply is no semblance of evidence from which any person could reasonably infer that petitioner could not give a satisfactory account of himself or that he was loitering or loitering there... without 'the consent of the owner or controller' of the cafe.¹⁰²

The arresting officer's conclusion was thus "no evidence" and conviction on its basis was held a failure of due process under the fourteenth amendment.

It is at least arguable that deeming a summons to constitute a prima facie case falls within the *Thompson* proscription. Thus it may

97. *Id.* at 870.

98. Rules and Regulations of the New York City Parking Violations Bureau, Art. 100 (1970).

99. J. WIGMORE, EVIDENCE §§ 734, 738 (3d ed. 1940).

100. Telephone interview with Criminal Court Judge Anthony Motta, Feb. 26, 1971.

101. 362 U.S. 199 (1960).

102. *Id.* at 205.

be contended that since the summons alone is not competent evidence because it is hearsay,¹⁰³ is not cross-examinable and is statistically demonstrable to be factually unreliable in many cases,¹⁰⁴ it is therefore so lacking in probative substance as to be no evidence at all. Although a misdemeanor was involved in *Thompson* and the decision's influence has been almost entirely in criminal cases,¹⁰⁵ there may be justification for applying it to the "civil" PVB adjudications.¹⁰⁶ First, parking violations remain a misdemeanor, for jurisdictional purposes, in all of New York State except New York City.¹⁰⁷ It would defeat logic and fundamental fairness to say that *Thompson's* protection is available in Albany but not in New York City, especially in view of the very similar small fine liability involved for loitering in Louisville and double parking in New York. Second, a New York Supreme Court has applied the no evidence concept to a civil proceeding contesting a commitment for psychiatric observation. It must be noted, however, that the proceeding was collateral to a trial for a criminal offense and the commitment was under the authority of a criminal procedure statute.¹⁰⁸

It may be contended that *Thompson* does not invalidate the PVB procedure since the summons may qualify as evidence under the exceptions in New York for affidavits of public officers and business records.¹⁰⁹ There is also the pragmatic point that since over ninety-five percent of the summonses issued are not contested it is reasonable for the agency to treat each summons as a prima facie case.¹¹⁰ However, *Thompson* does call into question the PVB's practice of resting decisions on the face of the document in contested cases where the issuing officer is available but not called.

1. *Statutory Presumption.* The PVB's enabling statute provides that "each notice of violation... shall be prima facie evidence of the facts contained therein."¹¹¹ This presumption that the hearsay ticket is correct seriously undercuts the sworn testimony of the respondent, who has thus far under PVB procedure a .09 percent likelihood¹¹² of cross-examining the issuing officer. The rule of *Leary v. United*

103. *But cf.* notes 101 and 102 *supra* and accompanying text.

104. See note 103 *infra* and accompanying text.

105. See, e.g., *Garner v. Louisiana*, 368 U.S. 157 (1961).

106. N.Y. VEHICLE AND TRAFFIC LAW, § 155 (McKinney's 1970): "Outside of cities having a population in excess of one million... [traffic] violations shall be deemed misdemeanors..."

107. *Id.*

108. *People v. Schidhaus v. Warden*, 37 Misc. 2d 660, 235 N.Y.S.2d 531 (1962).

109. See notes 74 and 75 *supra* and accompanying text.

110. *But see* note 118 *infra* and accompanying text.

111. Administrative Code of the City of New York, ch. 40, § 883.4 (b)(1) (1970).

112. See note 57 *supra* and accompanying text.

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*States*¹¹³ may be apposite. It was there held that a criminal¹¹⁴ statutory presumption must be regarded as irrational or arbitrary unless it can at least be said that the presumed fact is more likely than not to flow from the proved fact on which it is made to depend.¹¹⁵ While *Leary*'s penumbra remains vague, the Court's treatment of the case did not appear to lay down a rigid, and necessarily illusory, fifty percent test. Relative probability, however, is important; the determination of the presumption's constitutionality is to be proven by the available, pertinent data.¹¹⁶

Statistics of the New York City Criminal Court show that of a total 21,662 not guilty pleas disposed of in 1970, a total of 7,913 were either acquitted or dismissed¹¹⁷ - in short, in twenty nine percent of the not guilty pleas the summons was successfully disputed. PVB figures indicate that about one-fourth of those pleading not guilty have their case dismissed.¹¹⁸ The question thus arises whether the legislature can set up a presumption of liability in view of the fact that more than one out of every four not guilty pleas was upheld under the court system.

However, it might be said that the figure against which to measure the probability that the ticket is wrong on the facts is the total number of summonses issued, or at least the total brought to hearings of any kind. Those eighty-four percent in PVB hearings who plead guilty with an explanation admit the factual accuracy of the summons but seek mitigation after judgment. Thus, in terms of total number of hearings under the PVB (although those who do not respond to their tickets probably have no quarrel with their accuracy), the statutory presumption is successfully rebutted in less than four percent of the cases. On this view of the presumption's basis as encompassing the total number of hearing appearances, the PVB procedure would seem to meet the *Leary* test of probability.

C. IS THE PROCEDURAL SHORTCUT JUSTIFIED?

None of the above arguments advanced against the procedure which allows the agency to adjudicate without presenting the accusing officer to the respondent is clearly dispositive. All have, as

113. 395 U.S. 6 (1969).

114. See notes 55-56 *supra* and accompanying text.

115. 395 U.S. 6 at 36.

116. *Id.* at 38.

117. The Criminal Court has continued to hear the backlog of parking cases on its docket at the time PVB operations began. Telephone interview with Mrs. Pauline Rogers, Office of the Administrator of the Criminal Court, Mar. 3, 1971.

118. N.Y. Times, Jan. 31, 1971, at 55, col. 1.

indicated counter-considerations -- generally focusing on whether the small property interest in a parking fine necessitates the rigid application of due process and evidentiary doctrines. While no Supreme Court case has set a minimum property interest for the application of traditional court safeguards to administrative adjudication, it is noteworthy that *Green's* broadest dictum on the necessity of cross-examination is qualified by the clause "where government action seriously injures an individual."¹¹⁹

Even if not constitutionally compelled, it is believed that the doctrines of the residuum rule, right to cross-examination, no evidence and statutory presumption should be applied to require the attendance of the ticket issuer without straining their traditional content. While underlying pragmatic considerations cut both ways, there is strong support for their application here also. The gap between the maximum fifty dollars parking fine and the more serious interests to which the right of cross-examination has been held to apply is not so great. For instance, the physician's fine in *Erdman*¹²⁰ was composed of five separate one hundred dollar charges. If there had been only one charge, would the right to cross-examine have been applicable -- and if so, the question arises as to how this difficult principle from a motorist defending two or three tickets aggregating one hundred dollars. Indeed, it may be said that the extremely choked parking areas in New York make it probable that many motorists will receive multiple tickets and that this aggregate figure is the true property interest involved.

Furthermore, if the PVB is regarded as a prototype for expanding municipal administrative adjudication it may be unwise to discard a safeguard which will grow more important as more factually complex subject matter and more substantial property interests are subsumed to agency jurisdiction. The prospect of liability in serious matters on the strength of an unsupported slip of paper is not at all attractive.

For these reasons it is thought PVB respondents should have the right to demand cross-examination of the issuing officer as a matter of procedural due process. Several Criminal Court judges experienced in parking cases have agreed strongly that the safeguard is vital.¹²¹

These judges found the presence of the officer helpful in the great majority of contested cases. The opinion was thus expressed:

¹¹⁹ See note 88 *supra*.

¹²⁰ See note 72 *supra* and accompanying text. No question of license impairment was at issue.

¹²¹ Interviews with Judges Milton Shalleck, Joel Tyler, and Anthony Marra in New York City, Apr. 1, 1971.

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No matter how great the volume, my impulses and legal education indicate this absence of the witness is wrong. I don't like cutting corners from the heritage of our judicial system."¹²²

The City's District Attorney was not involved in prosecuting violators under the court system and takes no position on this evidentiary departure.¹²³ The Police Department, expectably, supports the change on the view that the officers' time is better spent elsewhere.¹²⁴

III. SUGGESTED MODIFICATIONS

The presence of the issuing officer, unless waived, may well be a legal necessity in contested cases. On the other hand, it seems clear that such presence will not always be helpful.¹²⁵ The goal of conserving police resources is an increasingly important one in today's metropolitan areas. A compromise between these two opposite and equally valid goals may be for the PVB to allow the respondent pleading not guilty to elect on the back of the summons to require the policeman's presence in certain cases. These cases would be limited to those involving a defense which contests the facts as set out on the face of the summons. The election would not be allowed in cases which require the submission of documentary evidence by the respondent to establish a defense. The right to elect for the officer's presence would also be restricted by its natural limitation to those cases where the policeman's testimony could be helpful. Some offenses, such as hydrant and fire zone violations, will not allow for a defense in mitigation. Incentive to waive cross-examination would inhere in the natural condition attached that if the policeman is required, the hearing must be scheduled at his convenience. This was the scheduling procedure of the Criminal Court. However, this waiver device can only work if the respondent has some idea whether the officer is necessary to his case, and this goes to the second suggested modification of PVB procedure.

The time of both the agency and its respondents is wasted by the PVB's failure to disseminate basic information to the public. Through newspaper advertising it should remind motorists not only of essential parking rules but also what documentary evidence is

¹²² Interview with Judge Joel Tyler in New York City, Apr. 1, 1971.

¹²³ Interview with Assistant District Attorney David Walgren in New York City, Apr. 1, 1971.

¹²⁴ Interview with Sgt. John Collins, Office of Deputy Commissioner of Public Relations, in New York City, Apr. 1, 1971.

¹²⁵ See note 100 *supra* and accompanying text.

required to establish a defense or mitigating circumstance. This information should also be given in capsule form on the summons' face. If the PVB is not prepared to accept a defense that the vehicle was disabled without a signed statement from a garage, it should make that fact known to the public. If a photographic series must clearly show every foot of a block to establish that a parking sign was down, the motorist should be informed. Valuable examiners' time could be conserved if the Bureau would publicize those violations, such as hydrant violations, for which no mitigation will be allowed. The Bureau avows an educative purpose, but fails to take the obvious step from retrospective to prospective lessons. Too often now the ignorant are charged a painful tuition.

Of course, clear notice of the right to appeal must be provided. An appeal rate of 0.2 percent¹²⁶ is suspicious, especially in view of a fifty percent reversal rate¹²⁷ on those few cases which are taken to the appeal board. The examiners should uniformly give notice of the right to appeal upon disposition.

IV. CONCLUSION

In a mechanical sense, there can be no doubt that agency jurisdiction over parking violations is superior to the former court system. This is so not only in terms of relative revenue and cost for the municipality, but in several respects also for the individual citizen. Convenience and expediency in getting a hearing, as well as avoiding the trauma of appearing in a criminal courthouse, have no small value to him.

The quality of justice in the PVB is not entirely satisfactory in the areas of providing adequate opportunity for cross-examination, and notice of requirements of proof and the right to appeal. It is to be remembered, however, that the paralyzed court system had some undesirable practices — inordinate delay in obtaining a hearing and mass processing, sometimes including automatic reduction — which the agency cures.

Correction of the most serious defect of the present PVB procedures — the absence of the issuing officer in nearly all cases heard on not guilty pleas — would necessarily entail some sacrifice of streamlined procedure, but not to the extent of thwarting the agency's fundamental goal. An argument can be made that expediency is a legitimate factor of due process in an administrative law context, and should outweigh the minimal value of witnesses who will very often fall back on reading the summons as testimony. Such

¹²⁶ See note 33 *supra* and accompanying text.

¹²⁷ See note 34 *supra* and accompanying text.

an argument, though, seems unacceptable on two fundamental grounds. First, an array of traditional safeguard doctrines may be invoked against it. Unless the trial of parking violations is so inherently petty as to set it in a class apart from other subject matter, there seems no reason why these doctrines' protection can be withdrawn simply by shifting jurisdiction to an agency. Second, future expansion of agency adjudicatory jurisdiction may bring the goal of efficiency into conflict with more substantial property interests of the individual.

As an example of the importance of this latter concern, expansion of the PVB to new subject matter may be imminent. New York City's Environmental Protection Agency (EPA) is currently preparing a bill which would empower the PVB to hear charges relating to the cleanliness of the streets, the purity of the water supply, and air, water and noise pollution.¹²⁸ Presently, Criminal Court procedures are used for all but a small percentage of environmental cases heard in the city.¹²⁹ It is EPA's position that "these procedures are both ineffective and inefficient relative to the administrative procedures which have been established for the Parking Violations Bureau."¹³⁰ It notes that the costs of processing air pollution summonses through the criminal courts until a judgment is obtained is considerably more than the revenue from the fines — largely because violators play upon the overburdened court dockets for a series of needless adjournments.¹³¹

At this writing the EPA has not decided which offenses would be shifted to the agency tribunal and which retained in the criminal and civil courts. Surely an agency forum could cure many of the obstacles to enforcement in the courts. Under present PVB procedure, however, questions of who is polluting and to what extent he is polluting will be settled without testimony of the accusing inspector. This does not seem adequate.

The fundamental merit of the PVB is that it operates efficiently to relieve the court system of a petty jurisdiction entailing a high volume of cases. Its drawback as presently constituted is a tendency to erode safeguards to the individual which the court system traditionally provides. Assuming, however, the essentially minor procedural changes needed to correct this tendency are forthcoming, the creation of the agency tribunal represents a promising response to the present dilemma of the overburdened courts.

128. Environmental Protection Administration Memorandum, Jan. 1971, on file with the *Columbia Journal of Law and Social Problems*.

129. *Id.*

130. *Id.*

131. *Id.*

welfare."

His family comes first

A. NO. 100

City Studies Parking Fines for Fast Cash

By MAURICE CARROLL

A limited amnesty to lure thousands of people who hold unpaid New York City parking tickets into speeding payment of their fines is under study by the Beame administration as a further step in bridging the current budget gap.

The administration hopes that by forgoing interest and penalties on unpaid tickets for a time, it will encourage motorists to pay the basic fines, providing the Parking Violations Bureau with much-needed funds for the city.

Two other proposals affecting motorists—an increase in parking-meter rates and a \$1 surcharge on automobile rentals—are being weighed by the City Council's Finance Committee.

According to rule-of-thumb

estimates by the committee chairman, Matthew J. Troy Jr., the package could produce more than \$50-million, about one-fifth of what the Mayor says is the remaining shortage in the municipal budget.

The mayoral income estimates were more modest.

Mr. Troy, who disclosed the proposals after a briefing for Councilmen by John Langan, First Deputy Budget Director, guessed that "between \$30 and \$40-million" could be brought in by forgiving interest and penalties for six months on \$170-million believed to be overdue on parking tickets.

"If the amnesty concept can bring in a few million," Sidney Frigant, the Mayor's press secretary, said later, "we're more

than willing to try it. But there are some problems." Mr. Beame is on vacation in Florida.

The revenue proposals surfaced as the city government moved to implement what the Mayor described on Friday as "the toughest austerity program since the Depression." It involves the dismissal of 1,510 city workers, a freeze on hiring in every city agency and a variety of other plans to help reduce what Mr. Beame says is a \$330-million deficit in the budget.

The steps ordered on Friday will make up \$100-million of that shortage. Mr. Beame said he would seek help from the state and Federal governments, as well as make further municipal moves, to help make up the difference.

Exhibit C

C-1

Troy Submits an Amnesty Plan

By MARK LIEBERMAN

A 60-day amnesty period to encourage scofflaws to pay past-due parking tickets without penalty was proposed yesterday by City Council Finance Committee Chairman Matthew J. Troy Jr. as a way of raising as much as \$50 million in additional city revenue.

The plan, according to Deputy Mayor James Cavanagh is already under study by the mayor's office, but Cavanagh said he doubted it would raise as much money as Troy estimated.

Troy's proposal was one of a series of reactions yesterday to Mayor Beame's announcement

Friday that 1,510 city workers would be fired and a job freeze imposed to narrow the city's \$330 million budget gap by \$88.2 million.

Goldin Object

Troy, who led an unsuccessful fight to cut the budget last June, announced that his committee would monitor the dismissal of the city workers in an effort to ensure that nonresidents are laid off before residents. The Queens Democrat said this would avoid a swelling of city welfare rolls. City workers are not covered by unemployment insurance.

Budget Bureau sources meanwhile estimated yesterday that severance payments to the dismissed workers would burden the city with an immediate cost of hundreds of thousands of dollars. Much of those payments, representing accumulated vacation and compensatory time of due the dismissed municipal employees, could be deferred as long as the employees remained on the city payroll and postponed their leaves.

In a related development, it was revealed that Controller Harrison J. Goldin had warned the Beame administration that the suggested cut of \$1.3 million in his office "could cost the city literally hundreds of millions of dollars."

In a letter to Budget Director Melvin Lechner, Goldin asked instead for an additional \$500,000, which he said would go a long way toward generating

more than \$100 million in economics.

Goldin's letter came after Beame's request 18-days ago for cuts in individual city agencies and offices. They mayor's announcement Friday did not include any trims in the controller's office.

Goldin said the additional staff made possible by the increased funds could save \$60 million in thorough engineering reviews of capital projects, identify \$25 million in cash balances through a reconciliation of bank accounts, save \$20 million by expediting settlement of claims, \$15 million through accounting controls and

\$10 million through complete annual audits of city agencies.

Troy, in his proposal yesterday, said that the city's Parking Violations Bureau has about 3170 million worth of tickets outstanding and predicted that a substantial sum could be raised with an amnesty program.

Troy also made other revenue proposals to the mayor, including:

- A 11 tax on each auto rental to offset uncollected parking tickets given to rented cars.

- A hike in parking-meter rates to a minimum of 25 cents per hour and the elimination of meters which permit more one hour for one coin.

HIT 'EM WHERE IT HURTS

The city is readying a novel scofflaw-chasing technique that looks like a winner.

Through the cooperation of county clerks here and in the suburbs, the Parking Violations Bureau plans to slap liens on real estate owned by park-and-run violators who have racked up three or more tickets. They won't be able to sell the property or raise mortgages on it until they've squared their accounts with the city.

The tough new policy makes a lot more sense than the forgive-and-forget amnesty urged by Councilman Matthew J. Troy Jr. and rightly deep-sixed by Mayor Beame.

At a time when the city needs every dime, these chiselers on wheels owe \$177 million and are running up another \$3 to \$4 million every month in uncollected fines and penalties.

They deserve absolutely no consideration. Let's have a blizzard of liens pronto.

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Job Action by Traffic Agents Causes Cut in Parking Tickets

By EMANUEL PERLMUTTER

A job action by Traffic Department employees in their contract dispute with the city has substantially reduced the number of parking and traffic violation summonses issued and has resulted in a loss of revenue to the city.

A high official in the Transportation Administration estimated yesterday that there had been a decrease of 30 per cent in the number of summonses handed out and a loss of more than \$30,000 a day to the city in fines since the slowdown started last Thursday. The spokesman said 7,244 summonses were issued, Monday as against the normal 11,000.

Carol Bellamy, president of Local 1182 of the Communication Workers of America, which represents the 600 parking enforcement agents (meter maids) and traffic control agents, estimated the summons decrease at 50 per cent and the revenue loss to the city at \$300,000 a day.

The parking enforcement agents now receive \$7,900 a year and the traffic controllers \$8,800. Miss Bellamy said the workers wanted the salaries of both to be increased to \$13,000 a year in a new two-year contract to replace the one that expired June 30.

She said that the parking and traffic agents had been subject-

ed to an increasing number of assaults—95 so far this year, compared with 28 in all of 1972.

John T. Burnell, the city's Director of Labor Relations, said yesterday the traffic employees had been offered raises of 8 per cent the first year and 6 per cent more in the second. "Our pattern for all city employees has been a 14 per cent raise over two years, and we are not going to break the pattern," he said.

Miss Bellamy said at a news conference in the lobby of City Hall that the workers had simply been "following the book." She said this consisted of checking diligently for broken parking meters, looking for and listing potholes interfering with traffic and taking time out to give directions to pedestrians.

"We are supposed to do field work as well as hand out summonses," she said. "That's what we have been doing. Naturally, that prevents us from handing out as many tickets as we otherwise could."

She said that in 1973 the meter and traffic control agents had handed 1,841,759 summonses, worth \$40-million to the city in revenue. And she added that the city should collect \$80-million this year because the agents now hand out tickets for 50 different violations as against only seven kinds in 1973.

and Cultural Affairs Administration, whose general appropriation fell to \$250,000 last year, from \$300,000 last year, and the Transportation Administration, whose funds were

Beame Bars Proposal On Scofflaw Amnesty

Mayor Beame rejected yesterday a recent proposal by City Councilman Matthew J. Troy Jr. for a scofflaw amnesty period, contending that the program would be counter-productive and encourage motorists to break the law.

The mayor estimated that \$177-million was due on outstanding summonses, of which \$102-million represented delinquency penalties over and above the amount of the fines. Under the amnesty program, that \$102-million would be uncollectible.

Mayor Beame estimated that \$30-million more represented summonses issued against rental cars, official governmental cars and those of deceased persons, persons who had not reregistered their cars and persons no longer living in the state. Most of this amount was considered uncollectible.

Therefore, according to the mayor's figures, this would leave a revenue source of only \$45-million.

Scofflaws Face New Weapon

NEW YORK (AP) — The city, in its largely losing war against parking-tickets scofflaws, is going to start attaching the homes of some of those who ignore summonses.

The move will put another The collection record, however, shows the bureau has a backlog of \$177 million in uncollected fines and this grows by \$3 million to \$4 million every month.

The first of the real estate liens was expected to be obtained in the next week or 10 days, according to Transportation Administrator Michael Lazar.

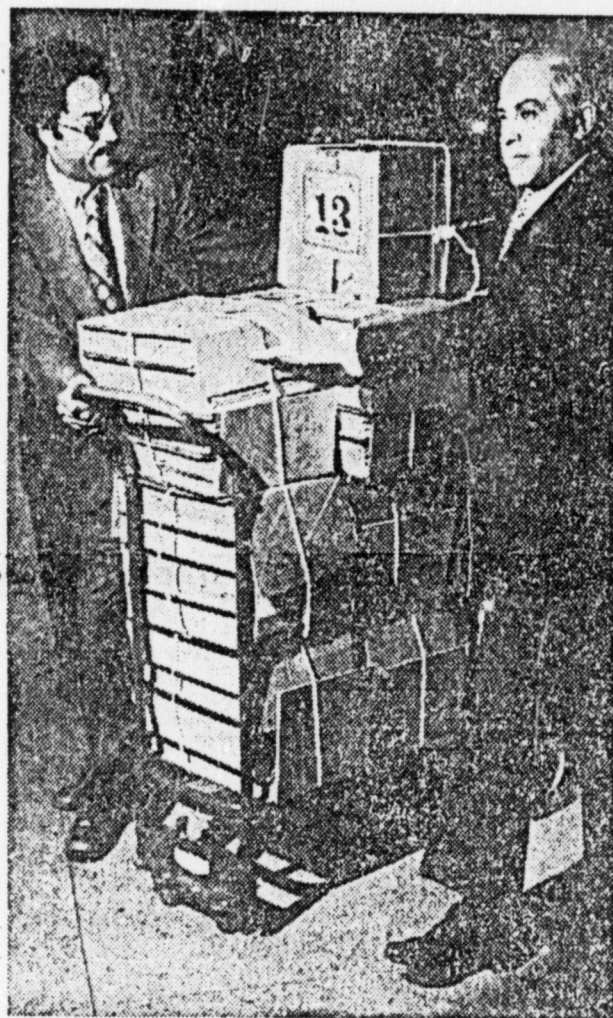
The action will freeze the property, barring owners from selling or obtaining mortgages, until the fines are cleared up. They will be directed primarily at out-of-town scofflaws.

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THE NEW YORK TIMES, SA



The New York Times

Elbert C. Hinkson, director of the Parking Violations Bureau, guiding cart to county clerk's office with the help of Transportation Administrator Michael J. Lazar. The packages contain the names of parking violation scofflaws. The city got property liens in order to obtain payment of fines.

City Gets Liens Against Scofflaws

The city's Parking Violations Bureau obtained liens yesterday against the homes or other real estate of parking-violations scofflaws in an intensified drive to collect \$100-million in outstanding fines.

"People have got to understand that the city means to collect all parking fines that are due," said Elbert C. Hinkson, the bureau's director, after he helped wheel into the New York County Clerk's office a cart loaded with eight books containing the names of more than 500,000 scofflaws."

Mr. Hinkson said the city was "primarily interested" in collecting from offenders who owe "thousands of dollars in unpaid tickets," many dating to 1970.

The judgments, which remain in effect for 20 years and prevent owners from selling or obtaining a mortgage on their property pending repayment, cover scofflaws in all five boroughs Mr. Hinkson said. The lien program, he said, would be extended soon against scofflaws from Long Island and in Westchester County.

City Has \$100M Glare in Eye As It Liens Against Scofflaws

News Dec. 14, 1977

By DONALD FLYNN

Transportation Administrator Michael J. Lazar yesterday filed about 500,000 liens against parking ticket scofflaws as part of an effort by the city to collect more than \$100 million in unpaid tickets.

The liens are, in effect, civil judgments against people who owe anywhere from \$150 to \$3,000 and up on three or more unpaid tickets.

What effect the filing of the liens will have remains to be seen however. The judgments still have to be collected somehow—and that's always been the problem.

Power to Grab Homes, Cars

Lazar apparently hopes the filing of the liens will frighten many scofflaws into paying up.

"We have the power to seize people's homes or cars and sell them to satisfy the judgments," Lazar insisted. But such steps are virtually never taken.

An examination of the eight thick books of unpaid tickets shows that most are against various businesses, with delivery firms and trucking companies in the forefront.

The average scofflaw owes about \$150, said Lazar. The big scofflaws—about 10% of the total—owe \$3,000 more.

According to Lazar, scofflaws now face possible action by private collection agencies, to whom the judgments may be given for collection. They will use dunning letters to force payment.

The Transportation Administration may garnishee salaries if payment isn't forthcoming, Lazar said.

Finally, the TA can seize personal property—like cars or even houses—and sell them to satisfy the debt.

In reality, however, houses are never seized. Some cars are grabbed. If dunning letters by private collection agencies don't bring in the money, it's up to the sheriffs in the five boroughs to execute the thousands of judgments.



News photo by Frank Russo

Transportation Administrator Michael Lazar (l.) and Parking Violations Bureau chief Elbert Hinkson push truckload of ledgers containing the names of scofflaws, at Supreme Court Yesterday.

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E NEW YORK TIMES, THURSDAY, JANUARY 2, 1975

Beame Reports Gains of His First Year—A Hard One—

By FRED FERRETTI

Mayor Beame, in his first "State of the City" report, asserted yesterday that despite a year of "merciless inflation and cruel recession" in which the city was forced to defer "some important plans into the future," the first year of his administration was one marked by the beginnings of tight managerial control of governmental operations and by closer relationships with other levels of government.

At the same time, the Mayor said that the "painful steps," including the 7,935 municipal job layoffs he ordered in an effort to eliminate a \$135.4-million deficit in the current \$11.1-billion budget, had been necessary to "preserve the fiscal integrity of the city while substantially maintaining our broad range of municipal services."

The Mayor said that what he was most proud of was his "success in winning Federal operating assistance for mass transit" in 1974, an effort he waged with the National Conference of Mayors that will help maintain the subway fare at 35 cents through 1975. This should be regarded, Mr. Beame said, as "symbolic of our efforts to improve our relationships with other levels of government."

Two innovations he reports are creation of the Urban Academy within the City University to train civil servants, and formation of the Productivity Council in cooperation with the leaders of the city's labor unions.

Many of the accomplishments reported by Mr. Beame were procedural changes in the way the city departments do their work, many were bookkeeping reforms, many were carry-overs from the last years of the administration of former Mayor

John V. Lindsay, and many were the simple dismantling of Lindsay programs and offices.

In the field of governmental operations, Mayor Beame said that he had streamlined his own office by dismantling the City Administrator's office, which had been called "useless," created a Policy Committee, which meets each week, and transferred the "trouble-shooting" aspect of the City Administrator's office to the new Management Analysis Division of the Budget Bureau. He said his proposals to dismantle three superagencies, the Human Resources, Health Services and Housing and Development Administrations, were already in the City Council.

The Mayor said revenue collections were improved in his first year in office, including the collection of \$15-million additional from parking violators and the transfer of social service programs to state and Federal titles in order to obtain an additional \$54-million.

In his campaign for Mayor, Mr. Beame promised to hire 5,000 new policemen in his first two fiscal years as Mayor, use officers on voluntary overtime in high-crime areas and open storefronts as police outposts in some communities.

Mr. Beame said he had been prepared to put 2,300 policemen and 900 civilians into the department on July 1, and "then we were hit by our deficit and we were forced to put that in abeyance." The report cites the closing of rear subway cars on long trains, stepped-up surveillance of bus stops, an expanded civilian radio taxi patrol, and the hiring of 589 civilians as his record on public safety for 1974.

Among the city facilities closed by the Mayor, either as budgetary necessities or as a result of what he regarded as

governmental streamlining, were the Manhattan and Queens Houses of Detention for Men, and eight firehouses.

In the area of the city's physical development, the Mayor said that in his first year the city had implemented the plan to turn the controversial Forest Hills Housing Project into the country's first low-income publicly sponsored cooperative, a process begun by the Lindsay administration.

Mr. Beame also said he had promoted the redevelopment of

Harlem, Little Italy, Coney Island and the garment center, pushed forward the redevelopment of the West Side Highway, expanded computerized traffic control systems and preserved not only the Rheingold Brewery in Brooklyn but also brought 1,200 new jobs inside of it.

All of these, Mr. Beame reported, as well as his extensive "walk and talk" strolls around the city were designed, he said, "to preserve the city's diverse neighborhoods and improve community life, and encourage neighborhood residents to use their streets in the evening hours."

Among programs cited by Mr. Beame were the creation of the Energy Office during last winter's fuel shortage, the formation of a Taxi Inspection Center and the expansion of an addicts' counseling program within the Addiction Services Agency.

In addition to citing his leadership in the national drive for transit funds, Mr. Beame also

noted efforts made by himself and the other Mayors of the state's "Big Six" cities—Syracuse, Rochester, Buffalo, Yonkers and Albany—to get additional aid for education and to reform the existing formulas for aid, citing these as other examples of cooperation with other levels of government.

He cited his establishment of the Mayor's Council on the Arts, which recommended creation of a separate city agency to deal with cultural matters, as well as the appointment of a Central Park conservator as his record in the area of recreation and culture.

In summing up, Mr. Beame said the year past "has marked a new sense of commitment to the city . . . and for the achievement summarized New Yorkers owe thanks to thousands of municipal employees . . . who have accepted the special challenge that local governments face in a time of national economic crisis by squeezing increased services from tighter budgets."

—As Mayor

THURSDAY, JANUARY 16, 1975

The New York

False Names and Artful Dodges Make



POST OFFICE DEPARTMENT
CERTIFICATE OF MAILING

THE CITY OF NEW YORK
TRANSPORTATION ADMINISTRATION
PARKING VIOLATIONS BUREAU

TO PAY:
—Make checks payable to:
Parking Violations Bureau

Do Not Send Cash
—List on the front of your checks:
• Subscore Number(s)
• Plate Number
—Attach this statement with your checks
in the enclosed envelope to:

CERTIFICATE NO. 103264702

FINAL NOTICE OF IMPENDING DEFAULT JUDGMENT

The summons listed below have not been fully satisfied. To avoidance of default judgment, you must pay the total amount due by the date on which the summons is issued. Under law, failure to pay or plead timely may result in entry of a default judgment against you, including an additional \$50-\$75 penalty and a possible execution against your income.

You may be certified as a scofflaw and not be able to renew your registration if you unpaid judgments on 3 or more summonses issued within 18 months.

ACTION WITHIN 30 DAYS AVOIDS FURTHER PENALTIES

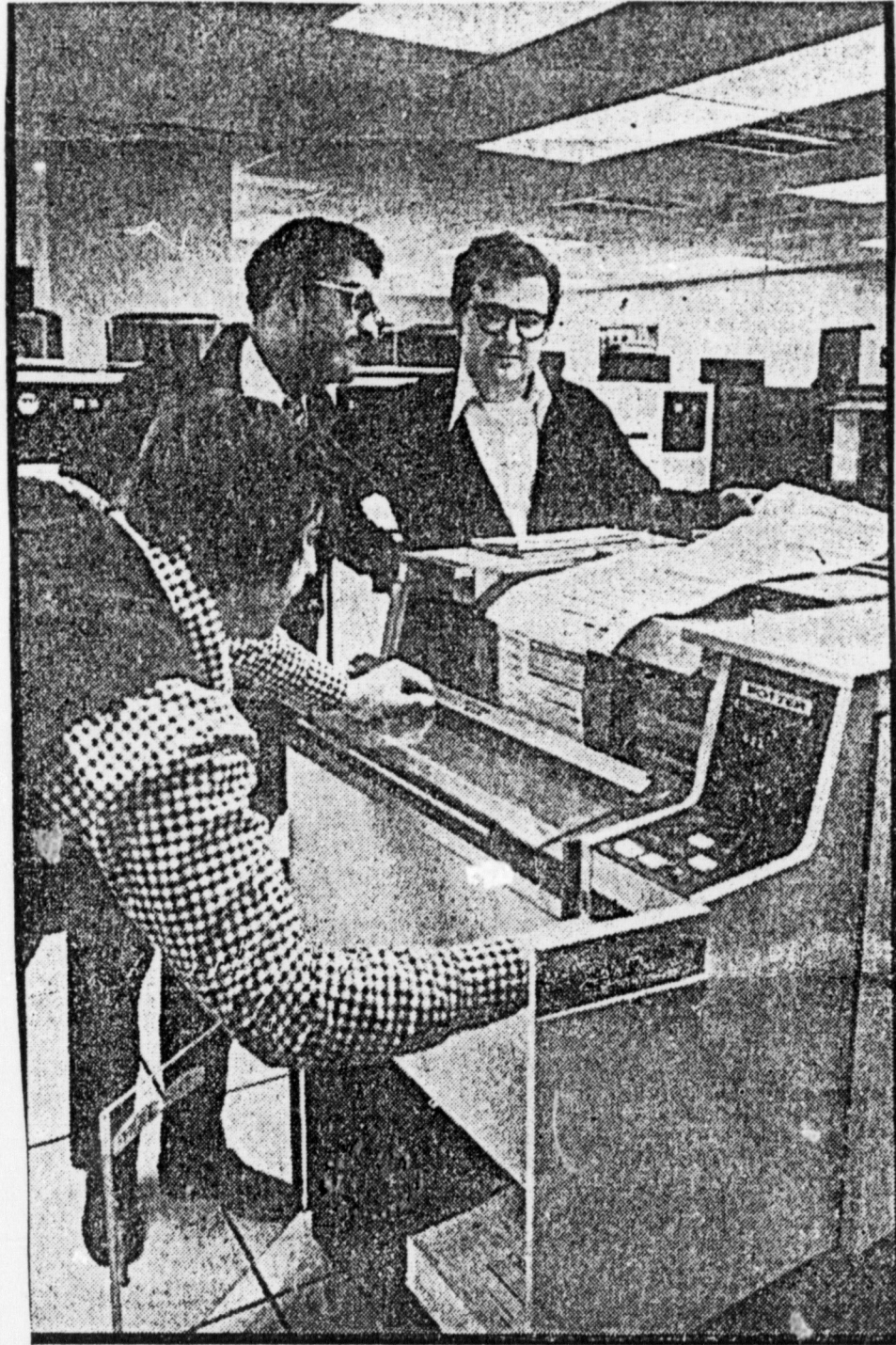
The New York Times/Tyrone Dubois

Below: A computer in the Parking Violations Bureau adds a name to a final notice for a, above, that lists unpaid violations. If the notice goes unheeded, Police Officer Jack Armstrong, left, and his partner, Henry Junge, right, scofflaw specialists, go after the offender's car and tow it away. Impounded cars that are not reclaimed are sold at auction.

Parking Scofflaws a Slippery Target



1/16/75 NYT 50 p. 43
(2)



Mt. Vernon's Scofflaw Campaign Brings \$25,000 a Month in Fines

By JAMES FERON

Special to The New York Times

MOUNT VERNON, N. Y.—

A man who stepped up to a window in City Court one day last week to pay two fines for moving violations was stunned to be asked a few minutes later to settle 16 delinquent parking tickets.

The clerk had jotted down the vehicle's license plate number, recorded it on a computer terminal a few feet from the cashier's window and found that it was owned by a scofflaw, one of 700 being tracked down each month in Mount Vernon.

Leo Kearney, director of the city's new Bureau of Data Processing and Service, said, "We would have caught up with him when his vehicle registration came due, but that could have been in several months."

This medium-sized city of 75,000 appears to be cutting sharply into parking violations while doubling revenue from fines by utilizing the computer to identify scofflaws.

Installed Last Summer

The new system, installed last summer by Mini-Computer Systems, Inc., of Elmsford, has improved a link with Albany and strengthened a procedure where communities within the state can withhold vehicle registration renewals until delinquent fines are paid.

"A decade ago the Mount Vernon policemen would not issue tickets because they knew they'd be ignored," Mayor August Petrillo said. "Since then we've installed 2,800 parking meters, hired 10 meter maids who issue 350 to 400 tickets a day and have recently started using the computer."

City officials like to emphasize the enforcement side of the new system, with scofflaw detection and settlement increasing sixfold, but revenues have also increased. "The system is paying for itself," Mayor Petrillo said.

The city collected \$146,000 in parking violation fines in 1971, between \$200,000 and \$230,000 in 1972 and 1973 when automated and manual systems were used concurrently and \$251,000 in 1974. Nearly 65 per cent of last year's total came in the final six months.

The Take Is Up

"We used to collect on an average of \$12,000 a month in parking fines," William J. Field, the clerk of the court, said. "Now we take in \$25,000."

A scofflaw is officially defined as someone who has three outstanding tickets over an 18-month period.

"We are using four tickets as a basis, however, to be on the safe side," Mr. Kearney said. "We began by checking on the owners of vehicles with an excess of 50 outstanding tickets. One man from the Bronx who parked illegally almost every day paid us \$1,100. We also found a woman with three cars and 250 tickets."

He said the city also inadvertently exposed an unfaithful wife to her husband, who arrived indignantly at City Court one day with a notice of dozens of unpaid parking tickets and proof that he had been out of town on those occasions. His wife's regular visits elsewhere became apparent through the computer printout.

Mount Vernon's parking tickets range from \$3 to \$6, with the fine doubling after 10 days. All violations are recorded in the computer according to license plate number. When a repeater appears, the city asks Albany for the owner's name and address and registration expiration date.

State Residents Included

The scofflaws are asked to pay their fines. If they don't, they are included on another list sent to Albany 100 days before their registration expires (the March list had 895 names) and the new forms are sent to Mount Vernon, to be held until accounts are settled.

It costs Mount Vernon \$4,000 a month to lease the computer and \$52,000 a year to pay for Mr. Kearney and his staff of two full-time and one part-time programmers and a keypuncher.

The city's parking authority director and 10 meter maids cost just under \$100,000. Revenues from parking come to \$175,000 a year and repayment to the city by the Parking Authority for capital costs come to another \$50,000 annually.

Later this year the computer will begin sending out water bills and, after that, tax bills.

Computers, Collection Agencies and City Police Act to Ferret Violators Out, but Still Fall Behind

By EDWARD C. BURKS

The elderly woman on the telephone was indignant. A young neighbor in her building got parking tickets in wholesale lots but simply tore them up because he had arranged to get his license plates from a distant state. Besides, she said, he lives in a filthy room with a dozen cats, and he runs around the halls naked.

For the scofflaw units working for the city's Parking Violations Bureau, the recent "cat man case" was easy to crack. "You got me," he said when the police showed up and he eventually paid more than \$1,000.

But there are some 300,000 other New York state residents plus about 55,000 from New Jersey, and more than 5,000 so far from Connecticut, all labeled as scofflaws for repeated parking violations in the city, and finding them is not all that easy.

Pros Are Called In

In fact, the job is so difficult that the city has turned over a big list of "hard-core debtors" to professional collection agencies.

Since October, the American Creditors Bureau, a collection agency, and the Manhattan law firm of Sennet and Krumholz, 30 East 33d Street, specializing in bad-debt recoveries, have been handling a great volume of cases, receiving 22 to 30 per cent of the debts collected as their fees, according to the violations bureau. They have been collecting at the rate of about \$100,000 a week in the last month, the bureau said yesterday.

The violations bureau is now being aided by newly compiled, quick-reference lists of scofflaws—lists that are

continually updated by computer. The bureau's big weapon is its ability to stop the annual renewal of vehicle registrations, to obtain court orders to place liens against property and bank accounts and to garnishee salaries—measures to enforce payment once a scofflaw is brought to bay.

Lately, from 5,000 to 10,000 scofflaws a month have been paying their fines and penalties at the bureau's Office of Judgments and Executions in a former savings bank at 51 Chambers Street. Several thousand more are found each month by the private collection agencies. Even so, the city may be losing ground because 12,000 to 20,000 new names are added to the official list of scofflaws each month.

On average, scofflaws owe the city between \$250 and \$400 in fines and penalties. But several thousand of them, through the use of false names and addresses, phony registrations, out-of-state plates and even stolen identity papers, have run up thousands of dollars in unpaid fines and penalties. More than 250 owe \$5,000 and up, and several dozen owe more than \$10,000.

The bureau estimates that scofflaws owe the city about \$120-million. That includes \$20-million by New Jersey owners and \$2.6-million by Connecticut owners.

Each month a computer printout of alleged scofflaws is prepared for police and scofflaw enforcement units, listing vehicles with registrations expiring that month. January's list contains nearly 25,000 names and lots of collection problems. The names and addresses of the people with the largest unpaid fines

usually are false; the plates may have expired in January a year ago; the name may be correct but the address out of date.

Names Stay on List

At any rate, the names remain on the scofflaw list for a couple of years because they may be recognizable aliases that collection agencies can follow up. The January list is headed by the following five, all owing more than \$10,000, all with expired registrations, and all not to be found, according to scofflaw units:

Plate Number	Name and Address	Amount Owed
Y67554	Pasquale, John 181 47th St., Queens	\$15,140
1522VD	Brown, Larry 437 E. 92d St., Bk'lyn	14,850
YF5817	Russo, Michael S. 48-25 21st St., Queens	11,415
YG6924	Clark, Stanley 435 E. 65th St., Manhattan	11,000
3551YE	Green, Peter 3450 Cannon Place, Bronx	10,625

The top violator on the list with an unexpired plate is William Donatelli, 601 Newkirk Avenue, Brooklyn, plate number 154XAI, amount owed, \$9,370. He is still being sought by the police.

The Parking Violations Bureau, with headquarters at 465 Park Avenue South and headed by Elbert Hinkson, has turned up some unexpected information about scofflaws.

For example, investigations have shown that a number of the worst scofflaws are undercover agents using phony names and addresses in going about their work, mostly for the Federal Government.

While the State Department of Motor Vehicles apparently provides "cover" for agents by letting them register cars falsely, according to Mr. Hinkson, no one has explained why undercover work should require an agent to run up thousands of dollars' worth of unanswered summonses.

Jack Armstrong at Work

An undercover man working on the scofflaw roundup is Police Officer Jack Armstrong, a 38-year-old plain-clothes man. He is one of less than a dozen police officers assigned to track down the hardest-to-find scofflaws.

As Officer Armstrong describes it, he and his partner, Officer Henry Junge, "go after the heaviest hitters on the scofflaw list—the real cuties who switch plates and addresses."

A number of "heavy hitters" prefer easy-to-get Vermont plates that use letters instead of numbers. The officers have tracked down the owners of "IRATE," "CHAOS," "JAM-2" and "SKIER."

Armed with Civil Court writs, the police can seize a scofflaw's car without notice. But usually they try to reach the owner first.

Sheriff Fred Weinberger takes charge of such vehicles, and if they are not redeemed in two weeks by the payment of fines, penalties and towing costs, he is empowered to sell them at auction.

Just Peanuts

In the 12-month period ended last Oct. 31, the sheriff's office collected \$211,458 for the Parking Violations Bureau, settling claims on 136 vehicles and selling 115 others.

But these are small numbers indeed when compared with the scofflaw total. Harry W. Voccola, deputy director of the violations bureau, gives the dimensions of the problem:

Every week 150,000 parking tickets are issued in New York City—or more than 7.5 million in 1974.

By definition, a scofflaw is a vehicle owner who has failed to settle three tickets over a period of 18 months. Even when the list of offenders is reduced to what Mr. Voccola calls the "hard-core nonresponders," the figures are awesome:

4800 plates with more than 100 tickets outstanding.

Continued on Page 69, Column 6

City Works to Ferret Out Its Scofflaws

Continued From Page 43

amounting to \$4.6-million in fines and penalties.

9220,000 New York plate numbers with 10 or more outstanding tickets, amounting to \$90-million owed to the city.

Even with computerized printouts on scofflaws—and with the decision by both New Jersey and Connecticut to help in the search for scofflaws from those two states—there is still a mass of names to be checked that thousands still are escaping the penalties. The alphabetized list of New Jersey scofflaws will be available for police and Jersey authorities in about a month, according to Mr. Voccola.

Books Distributed

The compiling of the Connecticut list is still in the early stages because the agreement with Connecticut authorities has been in effect for only a few months.

Huge books with the alphabetized printouts of offenders were distributed to courts in each borough at the end of November and arrangements are under way to provide copies for Westchester, Nassau and Suffolk, too. There is also a tie-in with the Department of Motor Vehicles' computer in Albany, providing an immediate "readout" on the registration status and number of vehicles owned by any offender.

Vehicle owners designated as scofflaws usually arrive at 51 Chambers Street to pay only after getting a notice in the mail that their registrations will not be renewed until all claims against them are

settled. Or they may have tried to sell a home or other real property only to find that the courts had placed a lien on it because of unpaid parking tickets.

Lots of Tellers

There are several dozen old-fashioned teller's windows to serve the scofflaws. If the owner has forgotten to bring the itemized bill sent to him by mail, he can get another copy on the premises, which is managed by Joseph Finazzo, administrative attorney of the bureau. The scofflaw can elect to pay (but only in cash or with a certified check or money order) or he can go to an adjustment window to argue the amount, or he can get in the long line to see Patrick V. McMahon, associate attorney, to make application for a hearing to challenge the bill.

There are two hearing rooms with outside lawyers hired to serve as hearing officers at \$75 a day. Everything is taped in the event of future appeals.

After settling at the Chambers Street "bank," owners can go to another window and obtain the form for their registration renewal.

Scofflaw payments in the

last six months of 1974 were running about \$500,000 behind the same months of 1973. According to Mr. Voccola, when the scofflaw collection program started in 1973 there was a big surge of payments because of a huge backlog of unpaid summonses.

In the first months of 1973, scofflaw collections sometimes reached \$1.8-million a month. In the last half of 1973, scofflaw collections amounted to \$6-million, compared with \$5.5-million for the same period of 1974. However, both November and December, 1974, equaled the same months of 1973. Total receipts including collections from scofflaws and from parking violators not yet declared scofflaws is on the rise—\$27.1-million in the last half of 1974 against \$23-million in the last half of 1973.

Sometimes there are outbursts when an owner loses in the hearing room. An owner who had been assisted into the hearing room because he was apparently blind regained his sight and lost his temper simultaneously after being told that he was liable for the summonses, bureau officials reported recently.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PETER V. KEILEY,

Plaintiff,

-against-

ELBERT HINKSON, et al.,

Defendants.

74 Civ. 5075 (IBW)

NOTICE OF MOTION FOR
JUDGMENT UNDER RULE
12(b) FED. R. CIV. PROC.

PLEASE TAKE NOTICE, that upon the affidavit of
ELBERT C. HINKSON, duly sworn to the 7th day of ~~December~~ ^{JANUARY}
~~ber~~, 1975, Director of Parking Violations Bureau of the
City of New York, defendant herein, the affidavit of
ELLIOT R. PRESS, sworn to January 23, 1975, the undersigned
will move this Court before Honorable Inzer B. Wyatt,
United States District Judge, on January 31, 1975, at
2:30 o'clock in the afternoon or as soon thereafter as
counsel can be heard, in Room 1106, at the Courthouse,
Foley Square, in the City, County and State of New York,
for an order dismissing the amended complaint herein pur-
suant to Fed. Rules of Civ. Proc. Rule 12(b)(1) on the
grounds that the Court does not have jurisdiction over
the subject matter of the action and (C) that the amended
complaint does not state a claim upon which relief may be
granted, and that in the alternative, the Court should
decline from exercising its jurisdiction under the doctrine

of judicial abstention, and for such other and further relief the Court may deem just and proper.

PLEASE TAKE FURTHER NOTICE that you are hereby required to serve any and all affidavits to be used in answer to this motion on the undersigned at least one(1) day before the hearing of this motion.

Dated: New York, N.Y.

January 23, 1975

W. BERNARD RICHLAND
Corporation Counsel
Office & P.O. Address:
250 Broadway
New York, N.Y.

By: 

ELLIOT R. PRESS

UNITED STATES DISTRICT COURT.
SOUTHERN DISTRICT OF NEW YORK

----- x

PETER V. KEILEY,

Plaintiff,

74 Civ. 5075 (IBW)

-against-

AFFIDAVIT

ELBERT HINKSON, etc., et al.,

Defendants.

----- x

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

ELLIOT R. PRESS, an attorney admitted to practice in the State of New York, hereby affirms under penalties of perjury:

1. I am an attorney in the Office of ADRIAN P. BURKE, Corporation Counsel of the City of New York and attorney for the respective defendants named herein.

2. This affidavit is submitted in support of defendants' motion to dismiss the complaint pursuant to the Federal Rules of Civil Practice, Rule 12(b)(1) and (6), and in opposition to the plaintiff's motion to convene a three-judge court pursuant to 28 U.S.C. §2281 and 28 U.S.C. §2284.

The Complaint

3. The plaintiff, who is seeking class-action status on behalf of all persons who have paid judgments rendered by the Parking Violations Bureau (hereinafter referred to as PVB) on

[2.]

parking tickets issued between November 20, 1968 and November 19, 1974, alleges that these judgments are unenforceable, were rendered without procedural safeguards guaranteed by law, and the imposition of penalties for failure to appear or plead is unconstitutional.

4. Jurisdiction is alleged under 28 U.S.C. 1343 and predicated on 42 U.S.C. 1983, to redress the deprivation under color of the laws of the State of New York and the City of New York of rights, privileges and immunities secured by the Constitution of the United States or by any Act of Congress providing for equal rights to citizens and the denial of due process of law.

The Complaint Should be Dismissed
Pursuant to Rule 12(a)(1) and (6)

A. Lack of Subject Matter Jurisdiction

5. The complaint fails to present a substantial federal question, essential to establishing jurisdiction under 28 U.S.C. §1343.

6. The plaintiff's principal claim that judgments were rendered more than two years after the time to plead or answer expired is totally without merit and uncorroborated by any documentation. On the contrary, the accompanying affidavit of defendant, Elbert C. Hinkson, amply demonstrates the frivolousness of this claim. Defendants' exhibits present clear and

[3.]

convincing evidence that plaintiff's complaint is groundless and should be dismissed.

7. The plaintiff admits the receipt of summonses and subsequent notices prior to the rendering of judgments against him. (paragraph 23) Plaintiff has failed to allege that he availed himself of the administrative remedies provided prior to judgment. In the absence of such an allegation, plaintiff lacks standing to complain that the administrative tribunal denies procedural safeguards previously available. It should be noted that his claim to a jury trial is without basis since there was no such right when jurisdiction was vested in the Criminal Court.

8. The plaintiff's claim of a denial of other procedural safeguards under the present statute is in each instance inapposite.

9. The only allegation of deprivation of a right, privilege or immunity relates to the payment of money, an inadequate foundation for jurisdiction under the Civil Rights Act.

10. To assert jurisdiction under 28 U.S.C. §1343, the complaint must allege that the defendants acted under color of State Law to deprive the plaintiff of rights guaranteed under the Fourteenth Amendment. The PVB was established in 1970 by an amendment to the NYC Administrative Code, Chapter 40 (note: the plaintiff's claim predates the existence of the PVB.) At the same time, the New York State Legislature amended the N.Y.V. & T.L. §155 which removed parking infractions from

[4.]

the category of crimes and permitted the establishment of administrative tribunals in cities of over a million population to hear and determine these infractions.

11. The New York City Administrative Code is a local statute operative exclusively within the City of New York. While it is true that the legislature in 1972 amended the N.Y.V. & T.L. to authorize and establish other PVBs throughout the State, the New York City Administrative Code was and continues to be the primary authority for the continued operation of the New York City PVB. The defendants therefore, did not act either in their individual or official capacity pursuant to State Law or in furtherance of a State-wide policy.

B. The Complaint Should Be Dismissed
Since No Claim Has Been Presented
Upon Which Relief Can Be Granted

12. The complaint does not present a claim cognizable under 42 U.S.C. 1983, since the named defendants have not been shown to have been engaged, personally, in any acts or conduct which deprived the plaintiff of a right guaranteed under the federal constitution.

13. The defendants named did not assume their present official positions with the City of New York during the time which plaintiff claims to have been the victim of the alleged unlawful acts. Messers. Beame and Goldin assumed their respective

[5.]

positions on January 1, 1974, and defendant Elbert C. Hinkson was appointed as Director of the PVB on March 1, 1974; all appointments were subsequent to the dates that the judgments were rendered against the plaintiff.

14. Nor does the complaint set forth in what manner these individual defendants personally violated the plaintiff's rights. Messers.

15. Clearly, neither defendants/Beame nor Goldin had any responsibility or authority with respect to the rendering and/or enforcement of judgments by the PVB or the collection and retention of monies received therefrom. It is noted that the prayer for relief seeks an injunction against State officials who are not parties.

16. The plaintiff is actually seeking to vacate judgments arising out of numerous notices of violation (summonses) issued against him. This is essentially an action against the PVB which is not a person within the contemplation of 42 U.S.C. 1983.

17. Insofar as the complaint alleges that the conduct of the defendants' predecessors and/or subordinates violated the plaintiff's due process rights, it does not sustain a claim under 42 U.S.C. §1983. The Civil Rights Act was designed to afford plaintiff a right against persons acting under color of law and is by its very nature directed at the personal conduct of defendants. The plaintiff has failed to allege any facts which show that the defendants had knowledge or participated in any of the alleged unlawful acts. The defendants cannot be held accountable

for the alleged conduct of their predecessors nor for the acts of subordinates since the doctrine of respondeat superior is inapplicable.

18. The complaint is a series of conclusory allegations. The plaintiff has alleged that he is a professional investigator who has investigated various aspects of the PVB and that he is familiar with the matters alleged in the complaint. However, the complaint is barren of any facts which support allegations that judgments were illegally rendered, or that attribute acts or conduct to any particular defendant that caused the plaintiff to be deprived of some federally protected right. Nor has plaintiff alleged any irreparable injury or individual discrimination necessary to obtain the equitable relief sought.

19. Furthermore, the local nature of the subject matter involved and its vital importance to this municipality, which goes to the very heart of its police power, presents a proper case for judicial abstention.

Inappropriateness of Convening
A Three-Judge Court

20. Plaintiff's Notice of Motion is unsupported by either an affidavit or Memorandum of Law. A memorandum is specifically provided for in the rules of the Court (Rule 9). and failure to serve and file it is sufficient grounds for denial of plaintiff's motion.

21. In order to successfully invoke the provisions of §28 U.S.C. 2281, the plaintiff must present a substantial federal question: a complaint which formally alleges a claim for equitable relief, and is otherwise within the provisions of the statute.

22. The question of whether a substantial federal issue is presented has been discussed supra and it is respectfully requested that the Court consider this issue as though set forth in opposition to the plaintiff's motion.

23. A finding of jurisdiction under 42 U.S.C. 1343 does not necessarily imply that jurisdiction exists under 28 U.S.C. 2281 since it is technically and narrowly construed.

24. The complaint, on its face, fails to state any facts entitling the plaintiff to equitable relief. No irreparable injury nor invidious discrimination prerequisites for the relief sought has been alleged. Nor has the plaintiff alleged on the face of the complaint that he has no adequate remedy at law.

25. Plaintiff's application for injunctive relief is directed to N.Y. V.&T.L. §242 which relates to administrative review after a hearing and N.Y.C. Administrative Code §882-a7.0 relating to judgments, as well as other sections of both statutes.

26. Since the plaintiff has failed to allege any facts relating to a determination after a hearing, or a determination after appeal, there is no basis to enjoin the operation and enforcement of N.Y. V.&T.L. §242.

27. The N.Y.C. Administrative Code (§883a 8.0) also provides for administrative review after a hearing. The plaintiff's inclusion of N.Y. V.&T.L. §242 is obviously for the sole purpose of satisfying the requirement that a State statute be the subject of injunctive relief in order to invoke 42 U.S.C. §2281.

28. The plaintiff's motion contains a further defect which is fatal to the relief requested. The acts alleged to have been committed by the defendants bear no relationship to the sections of the law sought to be enjoined. There is no claim that either N.Y. V.&T.L., §242 or N.Y.C. Administrative Code 883a-7.0 are unconstitutional on their face. Furthermore, there is no showing that either defendants, Messers. Beame or Goldin, committed any act pursuant to those sections.

29. The thrust of the plaintiff's motion is an attack on the jurisdiction and procedures of the New York City PVB. Admittedly, this local administrative tribunal is limited in its operation to the City of New York. The defendants are all local officials. The N.Y.C. Administrative Code is essentially a local law and the primary authority for the operation of the PVB. Therefore, the convening of a three-judge Court pursuant to 28 U.S.C. 2281 is inappropriate.

ELLIOT R. PRESS

Sworn to before me this

23 day of January, 1975

[Signature]
Notary Public, State of New York

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PETER V. KEILEY,

Plaintiff.

74 Civ. 5075

-against-

AFFIDAVIT

ELBERT HINKSON, et al.,

Defendants.

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

ELBERT C. HINKSON, being duly sworn, deposes and
says:

1. Since March 18, 1974, I have been the Director of the Parking Violations Bureau of the City of New York, and for over three years prior thereto, I was the Administrative Hearing Officer in charge of the Bronx hearing office. This affidavit is submitted in support of defendants' motion to dismiss the complaint and in opposition to the plaintiff's motion to convene a three-judge court.

2. The New York City Parking Violations Bureau is under the aegis of the New York City Department of Transportation. The authority creating the New York City Parking Violations Bureau is contained in Chapter 40 of the New York City Administrative Code. As Director of the Bureau, I am

responsible for the administration and discharge of its functions, powers and duties. The executive office is located at 475 Park Avenue South, Borough of Manhattan, New York. The Bureau maintains hearing offices in all five boroughs and employs a staff of 289 people. Attorneys are appointed to act as hearing examiners on a per diem basis.

Historical Background

3. Prior to July 1, 1970, the jurisdiction to hear and determine parking violations in the City of New York was vested in the Criminal Court. The laws and rules of criminal procedure were applicable and fines and imprisonment could be imposed. (NYV&TL, §1800)

4. The number of summonses returnable in the Criminal Court increased each year so that in 1969, three million summonses for parking violations were processed. The volume of these cases imposed a tremendous burden on an otherwise overtaxed Criminal Court system. A substantial number of summonses went unanswered, indicative of a general disrespect for the law and a weakening of the criminal justice system in the City of New York.

5. If a violator failed to appear, a warrant was ultimately issued for his arrest and sent to the Police Department for execution. These warrants burdened the Police Department which also had the responsibility for executing warrants issued for the arrest of persons charged with more serious crimes.

6. Simultaneously, the influx of over 700,000 vehicles into the City daily created a growing problem in the control of traffic.

7. Responsible public officials, judges and court administrators recognized that changes in the New York City system were necessary in order to:

1. restore confidence in and respect for the law in this area.

2. relieve the Criminal Court system from an intolerable burden of handling matters that were not criminal in nature, and

3. give the City the flexibility to deal with the growing traffic problem.

8. For these reasons, the legislature considered the problem, held hearings and in 1969 amended the New York State Vehicle and Traffic Law and Administrative Code of the City of New York to permit the transfer of jurisdiction of parking, stopping and standing infractions from the Criminal Court to an administrative tribunal. (See legislative memoranda annexed hereto as Exhibit "A")

Legislative Background

9. The New York State Legislature amended the Vehicle and Traffic Law, Section 155 (L 1969, Ch. 1075, eff. July 1, 1970) to permit cities having a population of one million or more to, "establish an administrative tribunal to hear and determine allegations of those traffic infractions relating to

the parking, stopping or standing of a motor vehicle. Any fine imposed by such tribunal shall be a civil penalty."

10. By the same Act, the legislature amended Chapter 40 of the Administrative Code of the City of New York by adding a new Title "A", which established a Parking Violations Bureau within the City of New York. A copy of Title "A" is annexed hereto as Exhibit "B". The Parking Violations Bureau was established and has operated since July 1, 1970.

11. In 1972, the New York State Legislature amended the New York State Vehicle and Traffic Law by adding an Article 2-B (§235-244) which provides for the adjudication of traffic infractions by administrative tribunals and requires this Bureau to substantially conform to its provisions. This Article was modeled on, and its provisions are generally the same as Chapter 40 of the Administrative Code. This Bureau has always acted in conformity with the provisions of the New York City Administrative Code and the New York State Vehicle and Traffic Law.

12. Chapter 40 of the New York City Administrative Code sets forth a comprehensive system for adjudicating parking violations. It specifically provides for hearings, (§883a-6.0), administrative review (appeal), (§883a-8.0) and judicial review of contested violations (§883a-9.0).

13. A violator is charged by the service of a notice of violation (Universal Summons), a copy of which is annexed as Exhibit "C". In the event the respondent fails to appear or plead, the following notices are sent by the Parking Violations

Bureau:

1. A notice advising the respondent of the outstanding violations; that failure to respond may result in the assessment of penalties and the rendering of a default judgment against him. This notice is not required by statute. (Copy annexed as Exhibit "D")

2. A notice of impending default judgment advising the respondent that default judgment will be rendered in the total amount of fines and penalties and that default may be avoided by entering a plea or appearance within thirty days of the sending of said notice. (Copy annexed as Exhibit "E")

The Plaintiff's Allegations

14. Peter Keiley in his complaint alleges, without distinction, that your deponent, together with other defendants and their attorneys, employees and agents, under color of law deprived him of his constitutional rights.

15. The plaintiff's claim is predicated upon his allegation that the defendants failed "to reduce unpaid parking tickets to enforceable judgments within the two-year period prescribed by law". The two-year limitation alluded to by the plaintiff applied to the rendering of default judgments by the Parking Violations Bureau.

16. The Administrative Code, §833a-7.0 provides:

"In no case shall a default judgment be rendered or, where required, a notice of impending default judgment be sent more than two years after the expiration of the time prescribed for entering a plea or making an appearance (emphasis supplied)

17. I have caused an examination to be made of the records of the Parking Violations Bureau with respect to the judgments rendered against Peter V. Keiley. The records reveal that every judgment was rendered within the prescribed time limit.

18. Annexed hereto as Exhibit "F" is a copy of page 2545 from the Judgment Register of the Parking Violations Bureau relating to the plaintiff, which was entered and filed in the Civil Court of the City of New York on November 1, 1971, pursuant to Administrative Code §883a-3.0. This record constitutes the rendering of eleven default judgments on the eleven listed summonses issued to the plaintiff between August 17, 1970 and April 7, 1971.

19. In dealing with a system of such overwhelming volume (over 6,700,000 summonses in 1973), it is necessary to maintain cumulative records so that if inquiry is made, reference can be had in one place to all outstanding judgments, no matter when rendered. For this reason, periodically, the computer is programmed to generate an up-to-date printout of all outstanding judgments, deleting those that have been paid.

20. Annexed hereto as Exhibit "G" is a copy of page 024200 from the Judgment Register of the Parking Violations Bureau relating to the plaintiff. The Judgment Register from which this page was taken was entered and filed in the Civil Court of the City of New York on March 14, 1973, pursuant to the Administrative Code and New York State Vehicle and Traffic Law, §237(5).

21. It includes all judgments previously rendered against the plaintiff and therefore contains eight unsatisfied judgments rendered on November 1, 1971, which are reflected in Exhibit "F". (These are indicated by an asterisk for the Court's convenience.)

22. Exhibit "G" shows that:

(a) 21 default judgments were rendered on July 17, 1972, on summonses issued between July 1, 1971 and February 22, 1972 (indicated by "a" for Court's convenience).

(b) 8 default judgments were rendered on September 11, 1972, on summonses issued between April 3, 1972 and June 14, 1972 (indicated by "b" for Court's convenience).

(c) 6 default judgments were rendered on six summonses issued between June 30, 1972 and August 11, 1972.

23. An additional eight judgments were rendered against the plaintiff between January 1, 1973 and May 28, 1973 for eight summonses which had been issued between September 7, 1972 and February 8, 1973. These judgments were entered in the Civil Court of the City of New York on November 28, 1973.

24. The Parking Violations Bureau maintains microfilm copies of all summonses upon which judgments have been rendered: records of final determinations sustaining or dismissing charges; records showing payment and non-payment of penalties. These records constitute the final determination (judgment) roll.

25. Notwithstanding the plaintiff's allegations, it is clear that each and every judgment was rendered within time prescribed.

Collection of Fines and Penalties

26. All fines and penalties collected by this Bureau are transmitted to the Finance Administrator of the City of New York for deposit in the General Fund, pursuant to Administrative Code §883a-3.0(g) and not the Comptroller of the City of New York, as the plaintiff alleges.

27. Insofar as the complaint alleges that I personally received and retained the moneys so collected from traffic infractions that had ripened into judgments, it is wholly untrue and unsupported.

28. Penalties are assessed against respondents who default in appearing, pleading or complying with the final determination of the Bureau. The plaintiff, as a defaulting respondent is treated the same as every other defaulting party. It is reasonable to treat defaulting parties differently from complying parties.

29. The enabling legislation provides for the assessment of fines and penalties not to exceed fifty dollars. The penalties, which do not exceed twenty-five dollars in any instance, are reasonably calculated to require compliance with the administrative system and are reasonable on their face.

Renewal of Motor Vehicle
Registration

30. Mr. Keiley was certified as a Scofflaw on November 22, 1972, pursuant to New York VTL 514.4(a), which provides that upon the failure of the owner of a motor vehicle

registered in New York to appear or answer or to comply with the rules and regulations of an administrative tribunal following entry of a final decision in response to three or more summonses issued within an eighteen-month period, the administrative tribunal may certify that fact to the Commissioner of Motor Vehicles.

31. The consequences of such certifications are that the registration for the vehicle will not be renewed until there has been compliance with the rules and regulations of administrative tribunal (VTL 514.4(b); VTL 401.5(a)).

32. The plaintiff's conclusory allegations are utterly without factual basis.

Elbert C. Hinkson
ELBERT C. HINKSON

Sworn to before me this

7th day of January, 1975

Bella Zinkovoy

BELLA ZINKOVY
Notary Public, State of New York
No. 100000000000
Qualified in New York County
Commission Expires March 30, 1975



STATE ADM. ADJ. BUR.



CRIMINAL COURT



PRINT ALL ENTRIES • USE BALL POINT PEN • PRESS HARD

44393

COPY OF NOTICE OF VIOLATION COMPLAINT

THE PEOPLE OF THE STATE OF NEW YORK - VS -

VOID

LAST NAME

FIRST NAME

INITIAL

STREET ADDRESS

CITY (as shown on license)

STATE

ZIP NO.

LICENSE OR IDENTIFICATION NUMBER

DATE OF BIRTH

DATE EXPIRES

DATE EXPIRES

DATE EXPIRES

DATE EXPIRES

DATE EXPIRES

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Parking Violations Bureau

City of New York

TO PLEAD NOT GUILTY OR GUILTY WITH AN EXPLANATION EITHER

BRING this SUMMONS and all PROOF to any PVB HEARING OFFICE and have a hearing within 7 days. (schedules permitting)

OR

FILL IN the following:

- DATE: (weekday 31-40 days after the issue date of this summons)
- HOUR: 9 - 11 - 1 - 3 (Circle one)
- LOCATION: Bronx, Brooklyn, Queens, Manhattan, Richmond (Circle one)

CHECK the "not guilty" or "guilty with an explanation" box on the PLEA FORM

WRITE your name and address on the plea form

MAIL to:

PARKING VIOLATIONS BUREAU
P.O. BOX 152, PECK SLIP STATION
NEW YORK, N.Y. 10036

This summons will be returned confirming the hearing date you have selected or fixing a new date if your choice is not available.

BRING this SUMMONS and all PROOF (evidence, witnesses, etc.) with you to your HEARING.

TIME TO ACT

A plea must be entered and the summons returned **WITHIN SEVEN (7) DAYS** of the date this summons was issued. **FAILURE** to do so may result in additional **PENALTIES** up to \$25.00 and may lead to a default judgment and possible denial of vehicle registration renewal.

If you have either of the following defenses, check the appropriate box and mail to: Parking Violations Bureau, P.O. Box 70, Peck Slip Station, New York, N.Y. 10038.

- ☐ Special Vehicle Identification
- ☐ Fast Meter

(NOTE: Jammed or inoperable meters are not justifiable pleas since the N.Y.C. Traffic regulations (§ 93) prohibit parking at inoperable meters)

PLEA FORM

I hereby plead

☐ GUILTY☐ GUILTY WITH AN EXPLANATION☐ NOT GUILTY

NAME (PRINT)

ADDRESS

CITY

STATE

ZIP NO.

SIGNATURE

DATE

HEARING OFFICES

- LOCATIONS:

- Bronx
1910 Arthur Avenue
7th Floor
- Brooklyn
44 Court Street
5th Floor
- Manhattan
475 Park Avenue South
(at 32nd Street) 6th Floor
- Queens
1 LeFrak City Plaza - 2nd Floor
(Junction Blvd & Long Island Expressway)
- Richmond
30 Bay Street

- DAILY HOURS:

Monday to Friday 9am to 4:30 pm

- EVENING HOURS:

Only on nights indicated below from 6 - 8:30 pm

Bronx
Brooklyn
Manhattan
Queens

Thursday
Tuesday
Monday
Wednesday

EXHIBIT "C"



Received From:
**THE CITY OF NEW YORK
TRANSPORTATION ADMINISTRATION
PARKING VIOLATIONS BUREAU**

TO PAY:

- Make checks payable to:
Parking Violations Bureau

Do Not Send Cash.

- List on the front of your check:

- Summons Number(s)
- Plate Number

—Return this statement with your check
in the enclosed envelope to:

TO HAVE A HEARING:

Bring this notice, the original summons
and all evidence to any hearing office
listed on the bottom of this statement.

**Special Problems: See Back of Return
Envelope.**

Offices.

Bronx, 1910 Arthur Ave.
Mon. - Fri. 9 A.M. - 4:30 P.M.
Thurs Eve. 6-8:30 P.M.

Brooklyn, 44 Court St.
Mon. - Fri. 9 A.M. - 4:30 P.M.
Tues Eve. 6 - 8:30 P.M.

Manhattan, 475 Park Ave. So. (32nd St.)
Mon. - Fri. 9 A.M. - 4:30 P.M.
Mon Eve. 6 - 8:30 P.M.

Queens, 1 LeFrak City Plaza
Mon. - Fri. 9 A.M. - 4:30 P.M.
Wed Eve. 6 - 8:30 P.M.

Richmond, 30 Bay St.
Mon. - Fri. 9 A.M. - 4:30 P.M.
No Evening Hours

NOTICE OF OUTSTANDING SUMMONS

The summonses listed below have not been fully satisfied. To avoid entry of default judgment(s),
you must either pay the total amount due or plead in person within 7 days.

Under law, failure to pay or plead timely may result in entry of a default judgment on each
item (including an additional \$5-10 penalty) and a possible execution against property or
income.

**You may be certified as a scofflaw and not be able to renew your registration if you have
unpaid judgments on 3 or more summonses issued within 18 months.**

ACTION WITHIN 7 DAYS AVOIDS FURTHER PENALTIES

STATEMENT DATE: STATE: PLATE NO.: PLATE TYPE:

TOTAL AMOUNT DUE

Return this
statement with
your payment.



Received From:
THE CITY OF NEW YORK
TRANSPORTATION ADMINISTRATION
PARKING VIOLATIONS BUREAU

TO PAY:

—Make checks payable to:
Parking Violations Bureau

Do Not Send Cash.

—List on the front of your check:

- Summons Number(s)
- Plate Number

—Return this statement with your check
in the enclosed envelope to:

TO HAVE A HEARING:

Bring this notice, the original summons
and all evidence to any hearing office
listed on the bottom of this statement.

**Special Problems: See Back of Return
Envelope.**

Offices:

Bronx, 1910 Arthur Ave.
Mon. - Fri. 9 A.M. - 4:30 P.M.
Thurs Eve. 6-8:30 P.M.

Brooklyn, 44 Court St.
Mon. - Fri. 9 A.M. - 4:30 P.M.
Tues Eve. 6 - 8:30 P.M.

Manhattan, 475 Park Ave. So. (32nd St.)
Mon. - Fri. 9 A.M. - 4:30 P.M.
Mon Eve. 6 - 8:30 P.M.

Queens, 1 LeFrak City Plaza
Mon. - Fri. 9 A.M. - 4:30 P.M.
Wed Eve. 6 - 8:30 P.M.

Richmond, 30 Bay St.
Mon. - Fri. 9 A.M. - 4:30 P.M.
No Evening Hours

FINAL NOTICE OF IMPENDING DEFAULT JUDGMENT

The summonses listed below have not been fully satisfied. To avoid entry of default judgment(s),
you must either pay the total amount due or plead in person within 30 days.

Under law, failure to pay or plead timely may result in entry of a default judgment on each
item (including an additional \$5-10 penalty) and a possible execution against property or
income.

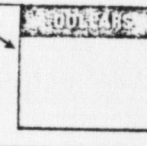
**You may be certified as a scofflaw and not be able to renew your registration if you have
unpaid judgments on 3 or more summonses issued within 18 months.**

ACTION WITHIN 30 DAYS AVOIDS FURTHER PENALTIES

ASSUMED NAME ADDRESS CITY STATE ZIP ORIGINAL PENALTY AMOUNT CREDIT REASON DATE

STATEMENT DATE STATE PLATE NO PLATE TYPE

Return this
statement with
your payment.



JUDGEMENT REGISTER

76.

PARKING VIOLATIONS BUREAU

PAGE 2,545

CIVIL COURT CITY OF NEW YORK

08/13/71

NAME	ADDRESS	ZIP	STATE	PLATE NUMBER	TYPE	SUMMONS NUMBER	ISSUE DATE	AMOUNT	JUDGEMENT NUMBER	DOCKET
KEILEY, PETER, V	67-80 EXETER ST	FOREST HILLS NY	11375	01	SM8933	16	129366145	02/11/71	35	00158181 2619342
KEILEY, PETER, V	67-80 EXETER ST	FOREST HILLS NY	11375	01	SM8933	16	123960141	10/22/70	35	00158182 1224163
KEILEY, PETER, V	67-80 EXETER ST	FOREST HILLS NY	11375	01	SM8933	16	100052363	08/24/70	40	00158183 0526407
KEILEY, PETER, V	67-80 EXETER ST	FOREST HILLS NY	11375	01	SM8933	16	116405895	11/18/70	50	00158184 1530156
KEILEY, PETER, V	67-80 EXETER ST	FOREST HILLS NY	11375	01	SM8933	16	111779010	08/03/70	50	00158185 0313215
KEILEY, PETER, V	67-80 EXETER ST	FOREST HILLS NY	11375	01	SM8933	16	120972460	11/10/70	40	00158186 1465192
KEILEY, PETER, V	67-80 EXETER ST	FOREST HILLS NY	11375	01	SM8933	16	120369642	09/18/70	40	00158187 0045583
KEILEY, PETER, V	67-80 EXETER ST	FOREST HILLS NY	11375	01	SM8933	16	120195762	08/17/70	40	00158188 0474391
KEILEY, PETER, V	67-80 EXETER ST	FOREST HILLS NY	11375	01	SM8933	16	145889186	03/03/71	40	00158189 2664292
KEILEY, PETER, V	67-80 EXETER ST	FOREST HILLS NY	11375	01	SM8933	16	140107181	04/07/71	50	00158190 3307269
KEILEY, PETER, V	67-80 EXETER ST	FOREST HILLS NY	11375	01	SM8933	16	142942973	03/09/71	50	00158191 2917373
TOTAL FOR PLATE NUMBER				SM8933	IS	\$	470			

FILED
CLERK'S OFFICE

NOV 1 1971

CIVIL COURT OF THE
CITY OF NEW YORKJUDGMENTS ENTERED
IN ACCORDANCE WITH THE ABOVE

Howard F. Tyson

HOWARD F. TYSON
CHIEF CLERK

NOV 3 1971

EXHIBIT "F"

PROGRAM # JS100-025

PARKING VIOLATION - READ

PAGE 024200

CYCLE 06 ENDING 11/22/72

JUDGMENT / SCCFFLAW SYSTEM

DATE 11/22/72

MONTHLY - OPEN JUDGMENTS - NAME SEQUENCE

NOTES	NAME/ADDRESS/ZIP	ST	PLATE #	IF	JUDGMENT	DATE	SUMMONS #	ISSUED	LOCKET #	CASE #	FINE	FILTY	PAID	DUE
N/A ---	NEILEY, PETER, V	67-20	EXETER ST		FOREST HILLS NY	11375			CLDSM	00000000				
	A	CI	SM8933	16	00444961	07/17/72	220505612	02/14/72	8254977		25.00	25.00	.00	50.00
	A	CI	SM8933	16	00444960	07/17/72	219209891	01/14/72	7724660		25.00	25.00	.00	50.00
	A	CI	SM8933	16	00444959	07/17/72	217560061	12/08/71	7117642		25.00	25.00	.00	50.00
	B	CI	SM8933	16	01100569	09/11/72	215690565	12/09/71	7127949		25.00	25.00	.00	50.00
	A	CI	SM8933	16	00444958	07/17/72	212322020	11/14/71	6681270		15.00	25.00	.00	50.00
	A	CI	SM8933	16	00444957	07/17/72	207474746	10/14/71	6180753		25.00	25.00	.00	50.00
		CI	SM8933	16	01711549	12/14/72	265953010	08/11/72	1428583		15.00	25.00	.00	50.00
		CI	SM8933	16	01623742	11/06/72	270682769	08/04/72	1302670		10.00	25.00	.00	35.00
	*	CI	SM8933	16	00158188	11/01/71	120195762	08/17/70	0474391		15.00	25.00	.00	40.00
	A	CI	SM8933	16	00444956	07/17/72	205768776	09/24/71	5862745		25.00	25.00	.00	50.00
	A	CI	SM8933	16	00444955	07/17/72	194341383	02/09/72	8217574		10.00	25.00	.00	35.00
		CI	SM8933	16	01711548	12/14/72	228530212	08/23/72	1576825		25.00	25.00	.00	50.00
		CI	SM8933	16	01599619	10/30/72	228528263	08/01/72	1248619		25.00	25.00	.00	50.00
		CI	SM8933	16	01468671	10/02/72	228526491	06/30/72	0794092		25.00	25.00	.00	50.00
	B	CI	SM8933	16	01108564	09/11/72	199716113	04/18/72	9570876		15.00	25.00	.00	40.00
		CI	SM8933	16	01552611	10/23/72	269893175	07/18/72	1042152		15.00	25.00	.00	40.00
	B	CI	SM8933	16	01108571	09/11/72	268021250	05/23/72	0192412		25.00	25.00	.00	50.00
	B	CI	SM8933	16	01108570	09/11/72	267810329	06/14/72	0566181		15.00	25.00	.00	40.00
	B	CI	SM8933	16	01108569	09/11/72	265745674	06/06/72	0422447		10.00	25.00	.00	35.00
	*	CI	SM8933	16	00158185	11/01/71	111775010	08/01/70	0313215		25.00	25.00	.00	50.00
	B	CI	SM8933	16	01108568	09/11/72	265197984	05/22/72	0174406		15.00	25.00	.00	40.00
	B	CI	SM8933	16	01108567	09/11/72	244227145	05/02/72	9799860		25.00	25.00	.00	50.00
	B	CI	SM8933	16	01108566	09/11/72	241256853	05/03/72	9727015		25.00	25.00	.00	50.00
	*	CI	SM8933	16	00158184	11/01/71	118405899	11/18/70	1520156		25.00	25.00	.00	50.00
	A	CI	SM8933	16	00444941	07/17/72	163898921	09/20/71	5817967		15.00	25.00	.00	40.00
	*	CI	SM8933	16	00158190	11/01/71	140107181	05/07/71	3287269		25.00	25.00	.00	50.00
	A	CI	SM8933	16	00444954	07/17/72	192992492	02/22/72	8438916		10.00	25.00	.00	35.00
	A	CI	SM8933	16	00444953	07/17/72	192769010	01/04/72	7554555		25.00	25.00	.00	50.00
	A	CI	SM8933	16	00444952	07/17/72	184257036	06/20/71	4698420		25.00	25.00	.00	50.00
	*	CI	SM8933	16	00158186	11/01/71	120972460	11/10/70	1465172		15.00	25.00	.00	40.00
		CI	SM8933	16	00158187	11/01/71	120345642	09/18/70	0845583		15.00	25.00	.00	40.00
		CI	SM8933	16	00158189	11/01/71	145088180	03/03/71	2864272		15.00	25.00	.00	40.00
	*	CI	SM8933	16	00158191	11/01/71	142942973	03/19/71	2917373		25.00	25.00	.00	50.00
	A	CI	SM8933	16	00444945	07/17/72	179513902	12/01/71	6995198		15.00	25.00	.00	40.00
	A	CI	SM8933	16	00444948	07/17/72	178553544	07/18/71	4759359		25.00	25.00	.00	50.00
	A	CI	SM8933	16	00444950	07/17/72	182612426	07/16/71	4723461		25.00	25.00	.00	50.00
	A	CI	SM8933	16	00444951	07/17/72	184222194	06/11/71	4241807		25.00	25.00	.00	50.00
	A	CI	SM8933	16	00444945	07/17/72	168514846	11/17/71	6902078		15.00	25.00	.00	40.00
	A	CI	SM8933	16	00444944	07/17/72	168407584	11/10/71	6665128		15.00	25.00	.00	40.00
	A	CI	SM8933	16	00444946	07/17/72	174768543	08/10/71	5221307		25.00	25.00	.00	50.00
	A	CI	SM8933	16	00444942	07/17/72	167003745	10/10/71	6158746		15.00	25.00	.00	40.00
	A	CI	SM8933	16	00444943	07/17/72	167046725	10/16/71	8420044		15.00	25.00	.00	40.00
	A	CI	SM8933	16	00444947	07/17/72	178218741	07/27/71	4801176		25.00	25.00	.00	50.00

EXHIBIT "G"

TOTAL 855.00 1075.00 .00 1930.00

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- -x

PETER V. KEILEY, : 74 Civ. 5075 (IBW) . . .

Plaintiff, : AFFIDAVIT BY PLAINTIFF

-against- :

ELBERT HINKSON, etc., et al., :

Defendants. :

----- -x

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

PETER V. KEILEY, being duly sworn, does hereby depose and say:

1. I am the plaintiff herein, am fully familiar with all the facts and proceedings heretofore had herein, and make this affidavit in opposition to defendants' motion to dismiss under Rule 12(b) of the Federal Rules of Civil Procedure and in support of my motion for the convening of a three-judge court.

2. I have read the affidavit of Elbert C. Hinkson, sworn to January 7, 1975, where Mr. Hinkson states that certain "judgments" have been entered against me by the Parking Violations Bureau ("PVB"). As far as I am able to ascertain, these alleged judgments do not, in fact, exist. Although I have been continuously harassed by representatives of the PVB and their legal representatives, regarding the collection of said "judgments", including the service of property executions upon me (allegedly issued out of the Civil Court of the City of New York, a copy of said property execution is annexed hereto as Exhibit A) and threats to garnishee my wages. The facts in brief outline are as follows.

3. On September 9, 1974, the American Creditors Bureau of New York, Inc., P.O. Box 276, 280 North Central Avenue, Hartsdale, New York 10530, mailed a statement to my home at 67-80 Exeter Street, Forest Hills, Queens, New York. This letter stated that the PVB has obtained judgments against me.

4. Upon receipt of this letter, I contacted the above agency and talked with a Mr. Joseph Gray (931-3657, ext. 56), and inquired as to the alleged judgments. I was informed by Mr. Gray that in fact the PVB had obtained and entered said judgments against me. I made further inquiries as to where these judgments were entered and was informed they had been entered at the PVB and Civil Court, New York County, 51 Chambers Street, New York, New York. I advised Mr. Gray that I would visit the PVB and make further inquiries and following these inquiries I would contact him.

5. On September 18, 1974 at or about 10:00 P.M., I visited 51 Chambers Street, New York, New York, where I made inquiries about the alleged judgments. I first spoke with a female employee as to how I would be able to obtain information about the judgments. I was advised that the judgments had been entered in the Civil Court, New York County, 111 Centre Street, New York, New York, in the Office of the Clerk. I made further inquiries while at the PVB as to the index number of these judgments. I was advised by the PVB that all information about these alleged judgments would be entered in the Civil Court, New York County, the Clerk's Office. I then requested to speak with a supervisor at the PVB and a male employee, believed by me to be a "Manager" thereof, reiterated the above remarks.

6. I then went to the Civil Court, New York County, Clerk's Office where I spoke to one of the clerks of the court and again made inquiries as to these alleged judgments. I was informed by the clerk that all judgments

entered had an index number and if I was unable to state the exact index number I would be unable to determine if in fact any judgments were entered. I requested to speak to the Chief Clerk of the Clerk's Office therein and made the same inquiry. The Chief Clerk reiterated the clerk's statement.

7. Following my inquiries at the Clerk's Office of the Civil Court, City and County of New York, I also carefully checked the judgment dockets at the Clerk's Office in the Civil Court, City and County of New York, although I did not have an index number. This review of the judgment dockets A through Z covered the period 1970 to date. I failed to find any judgments entered against me by the PVB for this period.

8. I have since January, 1973, on at least five occasions, visited the PVB at 44 Court Street, Brooklyn, New York, where I spent on the average about two or three hours in an attempt to obtain information about these judgments without any success. On two occasions, I waited from 7:00 a.m. until 9:00 a.m. in order to be given an interview.

9. After my third attempt, I was advised by a manager of the PVB, 44 Court Street, Brooklyn, New York, that these judgments were entered in the Civil Court, New York County, Clerk's Office, and was advised that without an index number I would be unable to obtain any information. I reviewed the judgment dockets and failed to find any judgment entered against me by the PVB. I again visited the PVB, 44 Court Street, the fourth time and attempted to obtain information without any result or aid from the PVB.

10. Following my fourth visit to the PVB without any result, I visited the County Clerk's Office in Queens County, Sutphin Boulevard and the County Clerk's Office in Kings County and carefully reviewed these records and

and failed to find any judgments entered against me by the PVB.

11. I then visited the Main Office of the PVB, 475 Park Avenue South, New York, New York and attempted to obtain information and was advised by the PVB's official to follow my prior efforts. I requested information about the alleged summons issued and requested a copy of same. The only information given was a print out of a summons, the docket number and date issued. I advised the PVB that I would be unable to state, if, in fact, the alleged summons were issued.

12. I have over the past four years paid an estimated \$1,000 in summonses to the PVB.

13. I contacted Mr. Gray of the American Creditors Bureau and informed him of my efforts to obtain information from the PVB and the courts and the clerk's offices. I requested that a copy of the alleged summonses be sent to me and I was informed that I would have to write to the PVB, 475 Park Avenue South, New York, New York and enclose a dollar for each summons alleged to have been issued or a check in the aggregate amount of \$44.00.

14. It is my firm belief that the alleged judgments have not been entered by the PVB in the Civil Court, County of New York, Queens County or Kings County. I firmly believe I have made an honest effort to obtain information from the PVB about the alleged summonses and it has failed to be of any aid.

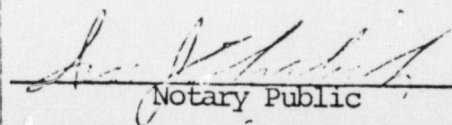
15. In total frustration, I was compelled to contact an attorney friend of mine, Walter C. Reid, Esq., who advised me to bring on an order to show cause and to appear pro se in the Civil Court, New York County, in order to

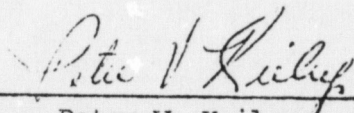
vacate the alleged judgments against me. Thereafter, with the help of Mr. Reid, the necessary papers were prepared (a copy of which is annexed hereto as Exhibit B) and on September 23, 1974 at 9:30 A.M., I went to the Office of the Clerk of the Civil Court, New York County, at 111 Centre Street, New York, N.Y., on the 2nd floor. As I have already noted, the PVB had informed me that judgments against were entered at this court. I first visited the Clerk's desk and made an inquiry about obtaining an order to show cause and if an index number would be required. I was informed that I would have to obtain an index number and at this point the clerk requested to see my papers.

16. After he read my papers, he called the Chief Clerk over to the desk. The Chief Clerk also read my papers and informed me that he did not believe the court would accept my request for an order to show cause and that he would like to check with the Court and others. I remained at the desk of the Clerk's Office and noticed that the Chief Clerk made 3 or 4 telephone calls with questions about my request to obtain an order to show cause. After about 3/4's of an hour, the Chief Clerk returned to the desk where I was standing and stated that I would be unable to obtain an order to show cause as the Civil Court did not have jurisdiction. He advised me that Chief Judge Thompson in a memo to the Clerk's Office had directed that any request for such relief regarding the PVB was to be referred back to the PVB.

17. I then returned to the PVB at 51 Chambers Street, New York, N.Y. only to be directed back to the Civil Court.

Sworn to before me this
30th day of January, 1975.


Notary Public


Peter V. Keiley
IRA J. EHRLICH
NOTARY PUBLIC, State of New York
No. 31-4600212
Qualified in New York County
Commission Expires March 30, 1976.

July 13, 1972 83

The City of New York PVB
Judgment-Creditor

-against-

Peter V. Keiley
Judgment-Debtor

BRUCE KEMP
MARSHAL
CITY OF NEW YORK
401 BROADWAY
NEW YORK, N. Y. 10013
431-8180

An execution against personal property has been issued to me as the result of a judgment entered against you and in favor of the above-mentioned judgment-creditor. According to the judgment, the amount due now is \$ 470.00. *See*

The issuance of an execution against personal property to a City Marshal creates a lien on all of your personal property not exempt by law pursuant to Sec. 5205 et seq. of the C.P.L.R. All property, not exempt, owned by you may be levied upon and sold at public auction. Your salary, any money due to you, or to become due to you, may be subject to garnishment upon service of the proper papers.

You have seven days from this date to pay the amount due at my office.

If you find you cannot pay this amount at this time, please contact this office as other arrangements may be made to assist you.

Very truly yours,

Bruce Kemp
Marshal, City of New York

Marshal's Index #

PV 25 714

*Mr. Stephen
T. B. Boney*

Exhibit A

CIVIL COURT OF THE CITY OF NEW YORK

BRUCE KEMP 84
Marshal of the City of New York

REFER TO DOCKET NO. PV 74

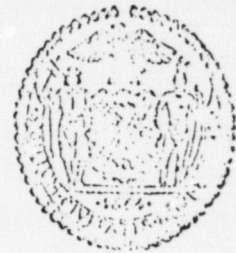
City of New York (PVB)

Judgment Creditor

against



Judgment Debtor



Peter V. Koiley
67-80 Exeter St.
Forest Hills, N.Y. 11375

TAKE NOTICE that there has been delivered to me a court execution against your property issued under the judgment entered in the adjacent entitled action for the sum of \$ 245.00 plus all Marshal's fees and interest.

Arrears to date \$200.00

NOTICE BEFORE MARSHAL'S LEVY

DEMAND is hereby made upon you for the payment of such sum and unless received at THIS OFFICE WITHIN FIVE DAYS, it will be my duty to seize and advertise such property as is not exempt under CPLR 5205 to sale under this execution, such as automobile, television, electrical appliances etc. to satisfy the judgment herein; or a Garnishee may be issued against your salary at your place of employment.

NOTE: This is lien against your personal property which is immediately made subject levy for the amount of this execution in accordance with the civil practice law and rules of the State of New York.

PAYMENT OF THIS JUDGMENT MUST BE MADE DIRECTLY TO BRUCE KEMP, MARSHAL, TO AVOID ADDITIONAL CHARGES FOR ADVERTISEMENT IN NEWSPAPER PREPARING INVENTORY OF PROPERTY ETC.

SEND THIS NOTICE
WITH YOUR REMITTANCE TO →

DATED, NEW YORK March 16, 1973

K-2

Bruce Kemp
BRUCE KEMP, City Marshal

Badge No. 2
401 BROADWAY
NEW YORK, N. Y. 10013

431-8180

FINAL NOTICE

85

REFER TO DOCKET NO. P.V. 74

CIVIL COURT OF THE CITY OF NEW YORK

BRUCE KEMP

Marshal of the City of New York

Re: City of New York (P.V.B.)

Vs.

PLAINTIFF

DEFENDANT



Peter V. Keiley
67-80 Exeter St.
Forest Hills N.Y. 11375



EXECUTION

AMOUNT DUE \$ 248.50

Plus all Marshal's fees and interest

YOU HAVE IGNORED ALL DEMANDS THAT HAVE AFFORDED YOU THE OPPORTUNITY TO VOLUNTARILY LIQUIDATE THIS EXECUTION, THEREFORE

BY VIRTUE OF A PROPERTY EXECUTION,
I WILL LEVY WITHOUT FURTHER NOTICE

on or after February 3, 1974

at 10:00 o'clock

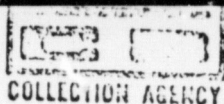
To Wit:- all personal property belonging to the above named defendant subject to levy sufficient to satisfy said judgment and Marshal fees.

ONLY PAYMENT IN FULL MAY BE ACCEPTED ON OR AFTER THE ABOVE DATE. ARRANGEMENT FOR PAYMENTS MAY BE MADE UNTIL, BUT NOT INCLUSIVE OF THAT DATE.

LEVY SUBJECT TO ANY AND EVERY MORTGAGE, LEIN, ENCUMBRANCE, SECURITY AGREEMENT ETC. THEREON.

BRUCE KEMP
Marshal, City of New York
401 BROADWAY
New York, N. Y. 10013
431-8180

DATED, NEW YORK February 1, 1974



COLLECTION AGENCY

OF NEW YORK INC.

p. o. box 276 • 200 n. central ave. • hartsdale, n.y. 10530
(914) 420-6700

86

Keiley, Peter V
67-80 Exeter Street
Forest Hills, New York 11375

September 9, 1974

AMOUNT: 1,980.00
Plate Number: SM8933

The PARKING VIOLATIONS BUREAU has obtained JUDGMENTS against you for illegal parking, stopping, or standing of a motor vehicle registered in your name.

These judgments have been referred to AMERICAN CREDITORS BUREAU for immediate liquidation. We are a professional COLLECTION AGENCY.

We offer you the following options to help liquidate your obligation:

- A. Mail payment in full by certified check, or money order. Self-addressed envelope enclosed.
- B. Come into our Office or call (212) 931-3510, and ask for Mr. Gray.

If payment is not received at this Office immediately, we will take the necessary steps to enforce the collection of these judgments.

At a Special Term, Part I of
the Civil Court, of the City of
New York, held in and for the
County of New York at 111 Centre
Street, New York, N.Y. on the
day of , 1974.

P R E S E N T :

HON.

Justice.

-----X

PETER V. KEILEY,

Plaintiff,

- against -

PARKING VIOLATIONS BUREAU,

Defendant.

-----X

Upon reading and filing the annexed affidavit of
PETER V. KEILEY, sworn to the 20th day of September, 1974, and
upon all the papers and proceedings had herein, let the defendant
show cause at a Special Term, Part I of this Court, to be held
in the County Courthouse, New York County, 111 Centre Street,
City of New York on the day of , 1974 or as soon
thereafter as counsel can be heard why an order should not be
entered herein vacating and setting aside the alleged judgments
in favor of the defendant and against the plaintiff by default
on unspecified dates, and why the plaintiff should not be
allowed to defend this action pursuant to Section 317 of the

Exhibit B

Civil Practice Law and Rules, and why the plaintiff should not have such other and further relief as to the court may seem just and proper in the premises, and in the meantime and until five days after entry of an order determining this motion, let all proceedings on the part of the defendant, its attorneys or the sheriff of any county of the State of New York, their agents and employees, to collect the judgment entered herein, be, and they hereby are stayed.

Sufficient cause therfor appearing, let service of a copy of this order and the annexed papers on defendant or its attorneys on or before the day of , 1974, be deemed sufficient.

E N T E R

J. C. C.

[- 2 -]

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK

-----X
PETER V. KEILEY,

Plaintiff,

- against -

PARKING VIOLATIONS BUREAU,

Defendant.
-----X

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

PETER V. KEILEY, being duly deposes and says:

I am the plaintiff in the above-captioned case and am fully familiar with the facts hereinafter alleged.

This affidavit is submitted in support by motion for an order re-opening certain alleged judgments entered against me by the defendant PARKING VIOLATIONS BUREAU.

As far as I am able to ascertain, these alleged judgments do not, in fact, exist. Although I have been continuously harassed by representatives of the Parking Violations Bureau and their legal representatives, regarding the collection of same, including a threat to garnishee my wages.

The facts in brief outline are as follows:

On September 9, 1974, the American Creditors Bureau of New York, Inc., P.O. Box 276, 280 North Central Avenue, Hartsdale, New York 10530, mailed a statement to my home at 67-80 Exeter Street, Forest Hills, New York. This letter stated that the Parking Violations Bureau has obtained judgments against me.

Upon receipt of this letter, I contacted the above agency and talked with a Mr. Joseph Gray, (931-3657 Ext. 56), and inquired as to the alleged judgments. I was informed by Mr. Gray that in fact the Parking Violations Bureau had obtained and entered said judgments against me. I made further inquiries as to where these judgments were entered and was informed they had been entered at the Parking Violations Bureau and Civil Court, New York County, 51 Chambers Street, New York City, N.Y. I advised Mr. Gray that I would visit the Parking Violations Bureau and make further inquiries and following these inquiries I would contact him.

On September 18, 1974 at or about 10:00 p.m., I visited 51 Chambers Street, New York City, New York, where I made inquiries about the alleged judgments. I first spoke with a female employee as to how I would be able to obtain information about the judgments. I was advised that the judgments had been entered in the Civil Court, New York County, 111 Centre Street, New York, in the County Clerks Office. I made further inquiries while at the Parking Violations Bureau as to the index number of these judgments. I was advised by the Parking Violations Bureau that all information about these alleged judgments would be entered in the Civil Court, New York County, County Clerks Office. I then requested to speak with a supervisor at the

Parking Violations Bureau and a male employee believed to be a "Manager " , reiterated the above remarks.

I then went to the Civil Court, New York County, County Clerks Office where I spoke to one of the clerks of the court and again made inquires as to these alleged judgments. I was informed by the clerk that all judgments entered had an index number and if I was unable to state the exact index number I would be unable to determine if in fact any judgments were entered. I requested to speak to the Chief Clerk of the County Clerks Office and made the same inquire. The Chief Clerk reiterated the clerk's statement.

Following my inquires at the County Clerks Office, I also carefully checked the judgment dockets at the County Clerks Office, although I did not have an index number. This review of the judgment dockets A through Z covered the period 1970 to date. I failed to find any judgments entered against me by the Parking Violations Bureau for this period.

I have since January 1974, on at least five occasions visited the Parking Violations Bureau at 44 Court Street, Brooklyn, New York, where I spent on the average of two or three hours in an attempt to obtain information about these judgments with out any success. On two occasions, I waited from 7:00 a.m. until 9:00 a.m. in order to be given an interview.

After my third attempt I was advised by a manager of the Parking Violations Bureau, 44 Court Street, Brooklyn, New York, that these judgments were entered in the Civil Court, New York County, County Clerks Office, and was advised that without an index number I would be unable to obtain any information. I reviewed the judgment dockets and failed to find any judgment entered against me by the Parking Violations Bureau. I again visited the Parking Violations Bureau, 44 Court Street, the fourth time and attempted to obtain information without any result or aid from the Parking Violations Bureau.

Following my fourth visit to the Parking Violations Bureau with out any result, I visited the County Clerks Office in Queens County, Sutphin Boulevard and the County Clerks Office in Kings County and carefully reviewed these records and failed to find any judgment entered against me by the Parking Violation Bureau.

I then visited the Main office of the Parking Violations Bureau, 475 Park Avenue South, New York City and attempted to obtain information and was advised by their office to follow my prior efforts. I requested information about the alleged summons issued and requested a copy of same. The only information given was a print out of a summons, the docket number and date issued. I advised the Parking Violations Bureau that I

would be unable to state, if, in fact, the alleged summons were issued.

I have over the past four years paid an estimated \$1,000.00 in summons to the Parking Violations Bureau.

I contacted Mr. Gray of the American Creditors Bureau and informed him of my efforts to obtain information from the Parking Violations Bureau and the County Clerks Office. I requested that a copy of the alleged summons be sent to me and I was informed that I would have to write to the Parking Violations Bureau, 475 Park Avenue South, New York and enclose a dollar for each summons alleged to have been issued or a check for \$44.00.

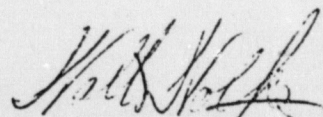
It is my firm belief that the alleged judgments have not been entered by the Parking Violations Bureau in the Civil Court, County of New York, Queens County or Kings County. I firmly believe I have made an honest effort to obtain information from the Parking Violations Bureau about the alleged summons and they have failed to be of any aid.

I have not requested nor sought the same or similar relief from any other Court or judge.

WHEREFORE, your deponent respectfully requests that an order opening the alleged judgments herein.

Sworn to before me this
20 day of September, 1974.


PETER V. KEIRNEY



WALTER V. KEIRNEY
Notary Public, State of New York
No. 41-1087502
Qualified in Queens County
Commission Expires March 30, 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- -X
PETER V. KEILEY,

Plaintiff,

-against-

ELBERT HINKSON, etc., et al.,

Defendants.

: 74 Civ. 5075 (IBW)

: AFFIDAVIT IN FURTHER OPPOSITION
TO DEFENDANTS' MOTION TO DISMISS
UNDER RULE 12(b) AND IN ADDITION-
AL FURTHER SUPPORT OF PLAINTIFF'S
MOTION FOR THE CONVENING OF A
THREE-JUDGE COURT

----- -X
STATE OF NEW YORK)

: ss.:

COUNTY OF NEW YORK)

EUGENE L. ST. LOUIS, being duly sworn, does hereby depose and say:

1. I am a legal assistant employed by the attorneys for plaintiff, am familiar with Exhibits F and G contained in defendants' Memorandum of Law, dated January 23, 1975, and make this affidavit in opposition to defendants' cross-motion to dismiss under Rule 12(b) of the Federal Rules of Civil Procedure and in additional further support of plaintiff's motion for the convening of a three-judge court, at the request of plaintiff's counsel.

2. At the request of plaintiff's counsel, after reviewing said Exhibits F and G, I went to the General Clerk's Office of the Civil Court of the City of New York, at 111 Centre Street, Room 225, on January 29, 1975 at 1:15 P.M. where civil judgments are on file. An employee of such office advised me that the records in such room did not go back to November 1, 1971 (the date of the 1st "judgment" entered against Peter Keiley on said Exhibit F) and referred me to the record room, Room 214, in the same building, for "old" judgment records.

3. Taking with me the docket and "judgment" numbers and dates, names,

summons numbers and other information taken by me from said Exhibit F, I went to said Room 214 and two female employees in said room were unable to understand either the docket or judgment numbers, saying that these numbers did not correspond with their numbers. They told me that even if these numbers were proper, they would not be able to produce the records for my perusal until 1-2 weeks, because the documents were not filed there any way, only a record of the entry of such judgments.

4. Then they referred me back to Room 225 in the same building for help, because they did not know what I was talking about.

5. When I returned to said Room 225, a male employee (in Section 5) had no knowledge of what I was talking about, but advised me that a Mr. Thomas Dean at 51 Chambers Street, New York, N.Y. "may be able to give me further assistance", with respect to any information about parking ticket judgments.

6. At about 1:45 P.M. on November 29, 1975, I went to 51 Chambers Street to find this Mr. Dean. There were no signs on the main floor at 51 Chambers Street indicating the presence of any public records relating to parking tickets, parking ticket judgments or otherwise, and I was forced to ask a uniformed assistant or guide if he knew a Thomas Dean. (There were no signs or other indications of the presence of any court or Civil Court branch in said building.) The assistant or guide said that he knew Mr. Dean but that he was out to lunch. Approximately 20 minutes later, the assistant or guide pointed Mr. Dean out to affiant as Mr. Dean came into the building and I was introduced to him, after which I followed him upstairs, to his "office" on the second floor.

7. There were no signs anywhere on the 1st or 2nd floor indicating that any records were kept in any office on the 2nd floor, or any indication that the 2nd floor was open to the public. To get to the "office" of Mr. Dean on the 2nd floor, I had to go through an office area to obtain access to the stairway, which at the bottom was cluttered with boxes of forms, computer run offs and the like, which indicated to me that this area was not open to the general public.

8. The "office" had no door and appeared to be a semi-enclosed balcony or the end of a hallway, with absolutely no protection for the computer print outs which were supposed to be some kind of records maintained in that "office". Mr. Dean appeared to be the only occupant of the "office". Anyone from the PVB offices on the main floor below had unrestricted access to the "office" and "records" contained thereat, assuming they knew about the existence of said "office". In other words, the records were subject to the destruction, removal, alteration or mutilation of any person who had such an inclination. Nobody was there, apparently, when Mr. Dean was out to lunch or leaves the "office" for other reasons.

9. The contents of such "office" amounted to a 15' bookcase housing approximately 100 volumes of computer printouts purporting to deal with alleged judgments resulting from parking tickets, and 2 tables with no paperwork on either. There was nothing else, no correspondence, no filing cabinets, no office equipment, no other furniture, apparently no telephone, or any indication that this was an "office" in the usual sense -- and certainly not a court. It had the appearance of a storage room, totally unsecured.

10. The earlier books had computer printouts of the Exhibit F type. The more recent books in use exclusively now, according to the books themselves

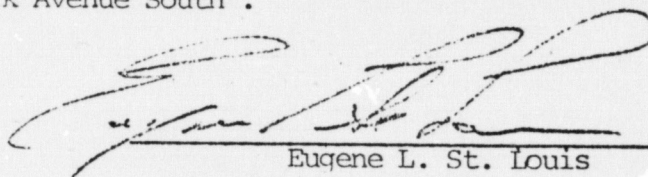
and to Mr. Dean, give only a summary of the unsatisfied "judgments" entered (it says) against any particular person as of a particular computer closing date (the latest being 11/29/74). The information on these new run-offs from the computer gave only the person's name, address, cumulative amount in dollars of outstanding "judgments" (\$1,980 as to plaintiff) and the number of violations involved. There were no ticket numbers, no docket numbers, no judgment numbers, no plate number, etc. There was no indication stamped on such pages in the new books that any rendering or entering of the "judgments" had taken place, in the PVB or the Civil Court or otherwise. This seemed to be a further streamlining of New York City's already abbreviated sense of due process.

11. Mr. Dean said that the information contained in Exhibit F as to new "judgments" could be obtained by me through inquiry of the computer located at 51 Chambers Street, Mr. Dean seeming to point to some other location on the 2nd floor.

12. If anyone wanted to obtain a copy of the records relating to himself or some other person, it would appear that a photocopy could not be made. I saw no evidence of any photocopying facilities in the building, and it is doubtful that Mr. Dean would allow a person to take one or more of the volumes of computer printouts out of the building.

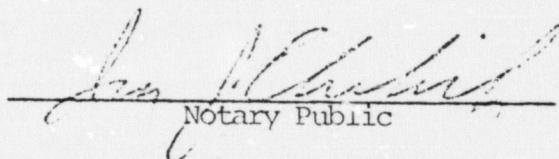
13. When I produced the judgment and docket numbers (taken from said Exhibit F) Mr. Dean advised me that these judgments (his words) are filed by name, not number, and asked me what the last name was. I told him the name was "Keiley", after which he said "You mean, Peter V.?" After being somewhat surprised at his immediate knowledge of Mr. Keiley, he said that since so many people were in to review the run-offs for Keiley, he felt it advantageous to place a paper clip on the page for easy reference. Mr. Dean said that the last

people to review such Keiley run-offs were New York City's Corporation Counsel. When I asked Mr. Dean where I could find the documents themselves referred to in Exhibit F as filed, with the Clerk of the Civil Court of the City of New York, Mr. Dean told me "We don't file them." Also, he said: "The only reason why the Civil Court maintained these computer run-offs was to make it the judgment procedure 7 more legal." In other words, these "records" maintained by him in such "office" were the attempt by the PVB to have taken compliance with the governing statute(s). Mr. Dean then said: "You may find what you're looking for at the PVB located at 475 Park Avenue South".



Eugene L. St. Louis

Subscribed and sworn to before me
this 29th day of January, 1975.



Notary Public

IRA J. EHRLICH
NOTARY PUBLIC, State of New York
No. 31-4309212
Qualified in New York County
Commission Expires March 30, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- -X
PETER V. KEILEY,

Plaintiff,

-against-

ELBERT HINKSON, etc., et al.,

Defendants.

----- -X

: 74 Civ. 5075 (IPW)
:
: AFFIDAVIT IN OPPOSITION TO
: DEFENDANTS' MOTION TO DISMISS
: UNDER RULE 12(b) AND IN
: FURTHER SUPPORT OF PLAINTIFF'S
: MOTION FOR THE CONVENING
: OF A THREE-JUDGE COURT

STATE OF NEW YORK)

: ss.:

COUNTY OF NEW YORK)

CARL E. PERSON, being duly sworn, does hereby depose and say:

1. I am one of the attorneys for plaintiff, am fully familiar with all facts and all prior proceedings had in this action, and make this affidavit in opposition to defendants' cross-motion to dismiss under Rule 12(b) of the Federal Rules of Civil Procedure (really Rule 56, F.R.C.P., as a motion for summary judgment) and in further support of plaintiff's motion for the convening of a three-judge court.

2. Defendants are doing their best to get this Court to believe that the PVB judgments against plaintiff and others in the class are valid and enforceable judgments. In order to throw out a smoke screen, defendants made what they call a "cross-motion to dismiss", under Rule 12(b) of the Federal Rules of Civil Procedure, including subdivision "(6)" thereof, but are quick to admit in their moving papers that reference to defendants' Exhibits F and G (exhibits to defendants' supporting affidavits) is necessary to reach their specious and erroneous conclusion that plaintiff has no case. Actually, as will be pointed out, various factual issues of great substance exist, requiring a

denial of defendants' "cross-motion to dismiss" under Rule 12(b)(6) for no reason other than plaintiff's need for discovery under Rule 56(f), F.R.C.P. In effect, defendants have made a motion for summary judgment under Rule 56(b), without compliance with Rule 9(g) of the General Rules of the Southern District, which motion plaintiff does vigorously oppose herewith on the facts; and, in addition, plaintiff seeks discovery under Rule 56(f) of the Federal Rules of Civil Procedure, to which plaintiff is entitled before the Court is to rule on defendants' motion for summary judgment, for reasons which appear below.

3. For the convenience of this Court and the parties, this affidavit will deal with the issues raised by defendants in the order of their appearance in the affidavits of Elliot R. Press, sworn to January 23, 1975 and Elbert C. Hinkson, sworn to January 7, 1975, respectively. (In parentheses at the beginning of each paragraph hereafter is a reference to the paragraph number(s) in the Press or Hinkson affidavits to which my response is being directed.)

4. (Press ¶ 5) The amended complaint presents substantial federal questions. See plaintiff's Memorandum of Law, dated January 21, 1975 and my supporting affidavit, sworn to January 21, 1975.

5. (Press ¶ 6) Plaintiff makes no claim that any of the federal counts (1, 3 or 4) is plaintiff's "primary" claim. Each of the federal counts is of major importance, and justified by the facts known to plaintiff and counsel.

6. (Press ¶ 6 Cont'd) Defendants are trying to pull the wool over the eyes of this Court as they have been doing for so many years with the public. Defendants claim that "judgments" were "rendered" against plaintiff (and,

presumably, the members of the alleged class) within the 2-year period established by § 241.2 of the New York Vehicle and Traffic Law ("NY V&TL") and § 883a-7.0b of Title A of Chapter 40 of the New York City Administrative Code ("NYC Code"). As their only "evidence" of the "rendering" of these "judgments" against plaintiff, defendants point to their Exhibits F and G, copies of a so-called "judgment register" of the "Parking Violations Bureau", "Civil Court City of New York" (defendants' Exhibit F). Exhibit G of defendants is entitled "Parking Violations Bureau", "Judgment/Scofflaw System", "Monthly - Open Judgments - Name Sequence". No other documents are offered by defendants to prove that there are "judgments" outstanding against plaintiff; that these "judgments" were duly "rendered" and "entered" in a constitutional court; or that a "judgment roll" was created and filed with respect to each of the "judgments" against plaintiff.

7. (Press ¶ 6 Cont'd) Nowhere does Mr. Press or Mr. Hinkson state where (i.e., identifying the specific building, room and court records) their "Judgments Registers" (or "judgments" referred to therein) were "rendered" or "entered" or filed. Instead, Messrs. Press and Hinkson stealthily glide over these basic issues, hoping that nobody will notice. Plaintiff in his original and amended complaints foresaw and alleged this non-existence of any "judgments" and contends that no "judgments" against him or others were either rendered or entered at any of the 5 Civil Courts in New York City or in the County Clerk's office in New York County or any other lawful place for such judicial events to take place. Exhibits F and G produced by defendants do not change plaintiff's contention. They merely bolster his claim. See the affidavit of plaintiff Peter V. Keiley, sworn to January 29, 1975 (hereinafter, the "Keiley Affidavit"), in which plaintiff relates the great effort he went through a few months ago to find out where these alleged judgments against him were rendered or entered in any of the Civil Courts in the City of New York, and found no evidence of any such

"judgments" at all in the Civil Courts of New York County, Kings County and Queens County or in the Clerk's Office of New York County. Instead, Mr. Keiley was referred by the Civil Court back to the PVB, which in turn referred him back to the Civil Court, in what amounted to a colossal runaround for a person trying to ascertain why so-called "judgments" were alleged to be outstanding against him. He was being told to pay for outstanding "judgments" without any opportunity to determine for himself (as distinguished from reliance on the PVB computer print-out) to what extent he had not paid these alleged judgments against him. Mr. Keiley is a professional investigator and highly familiar with documents on file and the filing systems in various courts in New York City. If Mr. Keiley cannot find evidence of any such judgments against him, then nobody can find any such judgments after conducting a reasonable search, which means that there are no judgments because of non-compliance with the C.P.L.R. of New York. See plaintiff's accompanying Memorandum of Law on this point.

8. (Press ¶ 6 Cont'd) It appears that whatever defendants call "judgments" are "rendered" and possibly "entered" in some fashion in one or more offices or storage areas or waste receptacles (for destruction) of the PBV itself, and that the PVB calls itself the "Civil Court of the City of New York" to make it appear to this federal court, plaintiff and others that the required renderings and entries of judgments and filing of judgment rolls have taken place in the "Civil Court of the City of New York" "or other court of civil jurisdiction or any other place provided for the entry of civil judgments within the state of New York", as stated in § 241.1 of the NY V&TL and § 883a-7.0b of the NYC Code. Plaintiff contends that any such renderings, entries and filings of judgments against plaintiff and the other members of the class would have to be done in a constitutional court, inasmuch as the required documents of an ultimate nature having a substantial legal effect, including Full Faith and Credit under the United States Constitution. Furthermore,

plaintiff contends that the PVB is not a constitutional court, for reasons set forth in plaintiff's Memorandum of Law, dated January 21, 1975 and, therefore, that the judgments could not properly be rendered or entered in the PVB. Plaintiff contends, therefore, that defendants have not complied with the NY V&TL and NYC Code regarding the rendering and entry of judgments; and that plaintiff's charges are well substantiated. If in fact the PVB has been transmitting "judgments" against plaintiff and others to one or more Civil Courts of the City of New York or some other constitutional, duly designated court, there is no evidence whatever that such "judgments" have been rendered or entered by such court to make the existence of the "judgments" reasonably available (similar to other records of judgments in the court) to persons seeking to ascertain whether any such judgments have been rendered or entered. Thus, plaintiff claims that this too would not be compliance with the two statutes. Plaintiff requests an opportunity to obtain needed discovery on these matters under Rule 56(f) of the Federal Rules of Civil Procedure before this Court rules on defendants' motion for a summary judgment, in effect.

9. (Press ¶ 6 Cont'd) Furthermore, there does not appear to be compliance with the requirements of § 2900.18 of the Rules of the Civil Court of the City of New York requiring an affidavit of military service; § 3215(e) of the CPLR requires an affidavit as to the default of plaintiff to be made by the PVB or its attorney.

10. (Press ¶ 6 Cont'd) The "judgment" purported to be rendered by the PVB does not meet the requirements of § 5011 of the CPLR, which states that a "judgment shall refer to, and state the result of, the ... decision, or recite the default upon which it is based."

11. (Press ¶ 6 Cont'd) Rule 5016 of the CPLR has not been followed. This rule states that, to effect an "entry" of a judgment, the judgment must be

signed by the clerk and filed by him. Defendants make no showing that this occurred with Exhibit G, particularly. Exhibit F which does have a clerk's purported signature is insufficient anyway. The Judgment Register is not a judgment under the CPLR and there is no evidence of proper filing thereof in a constitutional court.

12. (Press ¶ 6 Cont'd) Rule 5017 of the CPLR requires that a "judgment roll" be prepared by the attorney for the PBV or the court clerk; that the judgment roll shall be filed by the clerk when he enters judgment; that it shall state the date and time of its filing; that the contents are to include:

- (a) the summons;
- (b) pleadings;
- (c) admissions;
- (d) each judgment and each order involving the merits or necessarily affecting the final judgment; and
- (e) the proof required by § 3215(e) of the CPLR regarding the affidavit of default.

It does not appear that defendants are complying with any of these provisions of the CPLR referred to in ¶¶ 10-12 hereof, which defects plaintiff say are fatal, so that there are in fact no judgments or enforceable judgments against plaintiff or any other members of the class alleged herein.

13. (Press ¶ 6 Cont'd) Plaintiff did try to avail himself of a judicial remedy, as contemplated by the two statutes in question, but to no avail. The Civil Court of the City of New York, after communicating by telephone with various persons (presumably including the PVB and PVB attorneys) refused to sign plaintiff's order to show cause why the alleged judgments against him should not be opened up, to enable plaintiff to determine whether they had been

paid previously and whether they were based on summonses properly served on plaintiff. See the Keiley Affidavit. In any event, the PVB appeal procedures do not purport to provide or actually provide any means for testing the constitutionality of the two statutes. It is obvious that the PVB has no authority to declare the two statutes unconstitutional -- the relief sought herein by plaintiff. And the Civil Court refused to accept jurisdiction which plaintiff sought to obtain an order to show cause with respect to the validity of the alleged judgments against him. Thus, plaintiff has standing herein to contest the constitutionality of the two statutes.

14. (Press ¶ 7 Cont'd) See pages 20-21 of plaintiff's Memorandum of Law, dated January 21, 1975, regarding plaintiff's right to a jury trial under the New York State Constitution and the CPLR. The PVB's assumption of jurisdiction over parking violations from the New York City Criminal Courts does not change the fact that the "judgments" against plaintiff were based allegedly on actions for money only, which allow plaintiff to have a trial by jury. Defendants use the courts to produce an alleged civil judgment, but refuse to follow the safeguards designed to produce lawful civil judgments, including the right to a trial by jury when demanded.

15. (Press ¶ 8) See plaintiff's Memorandum of Law, dated January 21, 1975 for a discussion of the numerous procedural safeguards which have been denied plaintiff and the other members of the class, and which make the whole statutory scheme unconstitutional.

16. (Press ¶ 9) Plaintiff has alleged in ¶¶ 10(c), 11(c), 14, 19B, and 28 of the amended complaint and in his affidavit in support of plaintiff's motion that his property is being taken without due process, including the threatened levy upon his wages, car, home and other property; the threatened

denial of renewal of his motor vehicle registration; and the certification of him as a "scofflaw", which affects his employment and reputation. Plaintiff has alleged far more than payment of money as the basis of his deprivation. In any event, plaintiff does not accept the defendants' statement that an unconstitutional taking of one's money is not covered by the Civil Rights Act, 42 U.S.C.A. § 1983.

17. (Press ¶¶ 10-1) See pages 6-7 of plaintiff's Memorandum of Law, dated January 21, 1975, for a discussion of the statewide application of the two statutes alleged by plaintiff to be unconstitutional. Also, see the accompanying Memorandum of Law for the statewide application and effect of so-called "judgments" rendered and entered under the two statutes.

18. (Press ¶¶ 12-3) Plaintiff claims that the three defendants are personally responsible for the illegal activities alleged in his amended complaint. Among other things, Elbert Hinkson is in charge of the enforcement of the unpaid "judgments" outstanding against plaintiff and the other members of the class and the continued certification of plaintiff and other members of the class as "scofflaws"; this enforcement authority is the responsibility as well of defendant Beame, as Mayor of New York City and defendant Goldin, as Comptroller of New York City under applicable statutes (see accompanying Memorandum of Law); defendant Beame appointed and continues to retain defendant Hinkson as Director of the PVB and makes policy decisions relating to enforcement of the parking laws and collection of parking ticket fines and penalties. (See Exhibit C-3 of the affidavit of Carl E. Person, sworn to January 21, 1975, which shows that Mayor Beame, during early December, 1974, decided not to grant any amnesty with respect to payment of the stepped up penalties, of which penalties plaintiff complains herein; and defendant Harrison J. Goldin is the Comptroller of New York City, with responsibility for enforcement of unpaid amounts owed to

New York City and for the approval of any refunds of parking ticket payments once the moneys are turned over by the PVB to the General Fund of New York City. The continued denial of a refund of the moneys collected from plaintiff and other class members on non-existent and/or non-enforceable "judgments" is a continuing denial of the civil rights of plaintiff and the other members of the class.

19. (Press ¶ 12-3 Cont'd) The denial of plaintiff's civil rights did not occur merely at the rendering of the "judgments" against plaintiff, but is a continuing denial up to this day, by the continuing threat of enforcement of the "judgments" by execution against plaintiff's wages, car, home and other property; by the threatened denial of renewal of his motor vehicle registration; and by the continuing designation of plaintiff as a "scofflaw".

20. (Press ¶ 14) The defendants personally violated the plaintiff's rights during their tenure as Mayor (Beame), Comptroller (Goldin and Beame) and PVB Director (Hinkson) and up to and including this date by continuing:

- (a) to attempt to enforce the "judgments" against plaintiff (as to Messrs. Beame, Goldin and Hinkson);
- (b) to threaten the non-renewal of plaintiff's motor vehicle registration (as to Messrs. Beame, Goldin and Hinkson);
- (c) to certify plaintiff as a "scofflaw" (as to Messrs. Beame, Goldin and Hinkson); and
- (d) to refuse to refund moneys previously paid by plaintiff on non-existent and/or non-enforceable "judgments" (as to Messrs. Beame, Goldin and Hinkson).

21. (Press ¶ 15) Although Messrs. Beame and Goldin had no visible responsibility or involvement in the rendering or entering of all or most of

the judgments against plaintiff, Messrs. Beame and Goldin, as Mayor and/or Comptroller of New York City, had the duty and authority (together with Mr. Hinkson and his predecessor) to enforce lawful judgments and, under color of this law, to enforce the alleged judgments against plaintiff. Messrs. Beame, Goldin and Hinkson have the authority and responsibility for continued retention of moneys collected on lawful judgments and the duty to refund payments on non-existent and/or unenforceable judgments to the PVB by plaintiff and the other members of the alleged class. (These payments appear to have been turned over by the PVB to the General Fund of New York City, in accordance with the two statutes.) See accompanying Memorandum of Law.

22. (Press ¶ 15 Cont'd) Paragraph 2 of the prayer for relief in plaintiff's amended complaint seeks, by implication, an injunction to compel defendants to cease certifying plaintiff to the New York State Motor Vehicle Bureau as a "scofflaw" (based on the "judgments" now outstanding against plaintiff); also, the prayer seeks to enjoin the threatened denial of plaintiff's motor vehicle registration renewal, and would be binding on New York State Motor Vehicle officials and employees to the extent they were actually informed of the contents of the decree.

23. (Press ¶ 16) Plaintiff is not suing the PVB, but is trying to restrain the individual defendants herein from acting illegally under color of the laws which established the PVB and give the PVB its present authority. A decision that the two statutes are unconstitutional and an injunction against enforcement of the PVB "judgments" against plaintiff and the other members of the class would be comparable, it is true, to an order vacating the "judgments", but would be of greater effect. Other persons similarly situated would benefit by the decision striking down the two statutes.

24. (Press ¶¶ 16-7) Plaintiff is claiming that the defendants are responsible for the illegal activities alleged in the amended complaint, and that the activities by subordinates of the defendants are only ministerial in nature, to carry out the orders of defendants. Obviously, plaintiff needs discovery of defendants under Rule 56(f) in this respect, and so seeks such discovery before any ruling by this Court on defendants' motion under Rule 12(b)(6). It can be inferred from the official position of each defendant that the alleged activities were carried out pursuant to the authority and direction of the defendants. It may be true that non-continuing activities of defendants' predecessors in office (defendant Beame is a predecessor to Comptroller Goldin) should not create liability for defendants. But defendants themselves are continuing the illegal activities under color of law by:

- (i) continued enforcement of the "judgments" against plaintiff; and
- (ii) by failing to refund the moneys taken illegally by the FVB from plaintiff and the other members of the class, moneys which are due and owing to plaintiff.

25. (Press ¶ 18) Plaintiff's complaint and amended complaint were drafted carefully by counsel herein to allege facts such as that defendants Beame, Goldin and Hinkson have been enforcing non-existent or unenforceable "judgments" against plaintiff and the other members of the class. The non-existence and unenforceable features of the "judgments" are a conclusion reached from the allegation in ¶¶ 5(iii)(a), 10A, 10B and 10C of the amended complaint that no judgment roll was created or filed and that no judgment was rendered or entered within the 2-year period. The meanings of "render" and "enter" and "judgment roll" and assumed application of the 2-year period are legal conclusions, but since plaintiff has asserted that they do not exist, it is impossible for plaintiff to be more specific than plaintiff has been. It is now up to defendants to dispute plaintiff's claim of non-existence of judgments against plaintiff. These are substantial issues to be resolved by this Court.

26. (Press ¶ 18 Cont'd) Mr. Keiley is a professional investigator and made a more than reasonable effort to find evidence of any of the alleged judgments against him. See the Keiley Affidavit. Also, see plaintiff's Memorandum of Law, dated January 21, 1975, for an analysis of the federally protected rights of plaintiff which have been alleged to be violated. Mr. Keiley was not as fortunate as Eugene L. St. Louis, who happened to talk with an official of the Civil Court of the City of New York who was aware of the existence of a Mr. Thomas Dean and his "office". Certainly, the telephone book for 1974-75 afforded no clue as to the existence of such "office" as part of the Civil Court. The telephone book (white pages) at p. 1156 has only the following entries under "Courts" for New York City relating to the "Civil Court":

"Clerk's Ofc 50 Park Pl.....	566-0869
Information 111 Centre.....	566-2878
Calendar Clerks 111 Cntr.....	566-3751
Genl Clerks 111 Cntr.....	566-3771
Judgment Clerk 111 Centre.....	566-3772
Landlord & Tenant 111 Centre.....	566-3831
Small Claims 111 Cntr.....	566-3824
Special Term - Part 1 111 Cntr.....	566-2876
Special Term - Part 2 111 Cntr.....	566-2854

On the other hand, the "Parking Violations Bur Information" has no listing either for such "office". At p. 1160 the only listing is at 475 Park Ave. S., tel. no. 725-2612. At p. 1226, for the same address and telephone number, there is a listing for "Parking Violations Bureau" in bold type, as a business listing. It does not seem that such "office" of Mr. Dean is considered to be an office open to or known by the public, and that it would be reasonable to expect most persons seeking information about alleged judgments against them would be able to obtain the desired information and access to records.

27. (Press ¶ 18 Cont'd) Plaintiff has alleged facts constituting irreparable injury because of the alleged threatened execution against his wages, car, home and other property, by the alleged threatened non-renewal of his motor vehicle registration; and by the alleged continuation of certification of

plaintiff as a "scofflaw" -- highly injurious to his continued employment, reputation and credit. Also, plaintiff and others have been subjected to unconstitutional discrimination (see the Memorandum of Law, dated January 21, 1975 and accompanying Memorandum of Law.) Thus, plaintiff is entitled to the equitable relief sought. Irreparable injury need not be alleged, in any event, because plaintiff has not sought a preliminary injunction, only a permanent injunction.

28. (Press ¶ 19) The statewide application and importance of the issues herein require that this Court take jurisdiction of the subject matter hereof. The public is being robbed by New York City and its massive scheme to raise tens or hundreds of millions of dollars of revenue illegally, by denial of fundamental constitutional rights of persons who own and drive motor vehicles in New York City and elsewhere in this state, and beyond. This Court should eliminate this unconstitutional motorist trap and require New York City and other cities in New York State (indeed, in other states in the country) to raise needed revenues in a constitutional way, to enable the voting public to have greater control over public expenditures.

29. (Press ¶ 20) Plaintiff has submitted a Memorandum of Law (dated January 21, 1975) and an accompanying affidavit, of Carl E. Person, sworn to January 21, 1975.

30. (Press ¶¶ 21-3) Plaintiff presents numerous substantial federal questions; the complaint formally alleges a claim for equitable relief; and the complaint otherwise meets the requirements of 28 U.S.C.A. § 2281. See plaintiff's Memorandum of Law, dated January 21, 1975.

31. (Press ¶ 24) See ¶¶ 16, 19, 20, 24 and 27 in this affidavit above regarding plaintiff's statement of facts entitling plaintiff to equitable

and a showing of irreparable injury and invidious discrimination. Plaintiff has alleged a basis for equitable relief. There is no adequate remedy at law. Defendants should be enjoined from treating the non-existent and/or unenforceable "judgments" against plaintiff as lawful judgments. A monetary award would be inadequate with respect to this relief sought, and totally inappropriate.

32. (Press ¶ 25) Plaintiff's application for injunctive relief is directed to the entirety of both statutes as well as to various parts of each. See plaintiff's Memorandum of Law, dated January 21, 1975.

33. (Press ¶ 26) It is true that plaintiff has had no determination after any hearing and no determination after any appeal. Neither a hearing nor an appeal is needed to permit plaintiff to contest the validity of the judgments against plaintiff. See ¶ 13 above. Accordingly, plaintiff does have a basis to enjoin operation of the two statutes, and to obtain a declaration from this Court or a three-judge court that the two statutes are unconstitutional.

34. (Press ¶ 27) Even though the Administrative Code of New York City provides for administrative review by the PVB after a hearing, the PVB reviewing body has no authority to declare unconstitutional the statutes under which the PVB derives such authority to review. Therefore, an administrative review by plaintiff would be futile, a complete waste of plaintiff's time and could produce no desired result. Plaintiff did seek judicial review, but was refused because of a standing order of the Chief Judge of the Civil Court of the City of New York, and plaintiff was directed to return to the PVB itself, for additional administrative procedures, it is supposed. To put it bluntly, plaintiff was getting the classical runaround, pursuant to an unlawful arrangement between the Civil Court and the PVB. See the affidavit of Peter V. Keiley, dated January 30, 1975.

35. (Press ¶ 27 Cont'd) Plaintiff's inclusion of § 242 et seq. of the NY V&TL was done for the purpose of pointing out that the relevant NYC Code provisions are governed by the similar NY V&TL provisions and, therefore, that the two statutes have statewide application. Accordingly, 28 U.S.C.A. § 2281 is to be invoked by this Court. It is not a matter of choice, but of federal law, a statute designed to protect New York State and other states from any hasty, ill-considered action by a single federal judge upsetting a statewide statute.

36. (Press ¶ 28) Defendants' activities do bear a relationship to the sections of the law sought to be enjoined. Defendants are responsible for the enforcement of the sections and the whole statute in both cases, and for the continued non-payment of refunds to plaintiff and the other members of the alleged class who have previously paid money to the PVB as to non-existent and/or non-enforceable judgments.

37. (Press ¶ 28 Cont'd) Plaintiff claims that both statutes are unconstitutional on their face. See Memorandum of Law, dated January 21, 1975.

38. (Press ¶ 28 Cont'd) Messrs. Beame and Goldin committed the activities of enforcement of the sections as well as continued non-payment of refunds of moneys collected by the PVB pursuant to prior enforcement of the sections by them and others, and paid over to the General Fund of New York City.

39. (Press ¶ 29) Plaintiff does not admit that the New York City PBV is operating under a local statute. Its authority comes from the two New York statutes, with the New York statute (Article 2-B of the NY V&TL) of statewide application governing and limiting the statute (NYC Code) relating to New York City only.

40. (Press ¶ 29 Cont'd) Defendants are local officials, yes, but they are operating under laws of statewide application, similar to local policy who enforce state laws of a criminal nature. Convening of a three-judge court pursuant to 28 U.S.C.A. § 2281 is appropriate because of the statewide application of the two statutes. See ¶ 11 of the Hinkson affidavit, at p. 4, in which Mr. Hinkson admits:

"... Article 2-B (§235-244) ... requires this Bureau to substantially conform to its provisions. This Article was modeled on, and its provisions are generally the same as Chapter 40 of the Administrative Code. This Bureau has always acted in conformity with the provisions of the New York City Administrative Code and the New York State Vehicle and Traffic Law." (Hinkson ¶ 11, p. 4.)

41. (Hinkson ¶¶ 15-6) The 2-year limitation alluded to by the plaintiff applies to the rendering and possibly entering of default judgments by the PVB. This 2-year period is a maximum for entry of judgments, and may well apply only to judgments which are not taken by default. See page 7 of the accompanying Memorandum of Law, dated January 30, 1975, which discusses the provision of the CPLR which requires that a default judgment be entered within 1 year in absence of court order.

42. (Hinkson ¶ 17) Mr. Hinkson states that the:

"records reveal that every judgment was rendered within the prescribed time limit."

See ¶¶ 7-12 above and pages 4-8 of the accompanying Memorandum of Law, dated January 30, 1975, for a discussion of why this matter is subject to major dispute by plaintiff.

43. (Hinkson ¶ 18) The so-called "Judgment Register" is not itself a judgment under the CPLR, and does not reveal in what part of the Civil Court (building and room) the information was rendered, entered or filed. See the affidavit of Eugene L. St. Louis, sworn to January 29, 1975, for facts which prove that the information was entered and filed in the hallway or storage area

of the PVB, which makes the filing of defendants' Exhibits F and G ineffective as a rendering, entering or filing of a judgment against plaintiff under the CPLR. The CPLR requires that the court have possession of its documents and that the documents be a public record, made available to persons who go into the court to seek the records and obtain copies thereof. Mr. Hinkson admits that there were no lawful judgments against plaintiff by his statement:

"This record constitutes the rendering of eleven default judgments on the eleven listed summonses issued to the plaintiff between August 17, 1970 and April 7, 1971."

It is obvious that there was no judgment rendered or judgment entered, and that no judgment roll was prepared or filed in accordance with the CPLR. See ¶¶ 7-12 and 42-3 above and pages 4-8 of the accompanying Memorandum of Law, dated January 30, 1975.

44. (Hinkson ¶ 19) Mr. Hinkson admits that he continues to render and enter the same "judgments" periodically against Mr. Keiley, until the "judgment" is paid, at which time the "judgment" is expunged of all information relating to the rendering or entry of the judgment. Plaintiff believes that with this elimination of information from the computer data files, all of such "judgments" against plaintiff, after payment by plaintiff thereof, were removed from the computer data files, with no trace of the "judgment" available to a person who wishes to see all judgments against him, whether satisfied or not. (An owner of a car, for example, might wish to see how many judgments against him were rendered as a result of the operation of his car by others.) This is not permitted by the CPLR, which requires a permanence of judgment records, even though a judgment is paid. This goes to the essence of a "court". A satisfaction piece under § 5020 of the CPLR is used to evidence the payment as a matter of public record, and as a discharge of the judgment. Accordingly, it looks as if Mr. Hinkson in fact does not have any valid judgments against plaintiff or any other members of the class, and has not rendered or entered any judgments in accordance with the CPLR. Yet, he would try to use the

issuance of a property execution -- issued by the Marshal pursuant to the order of the PVB - docket No. PVB-74 -- against plaintiff, as if the PVB were a court, to enforce his non-existent judgments. See the Keiley Affidavit, and Exhibit A thereto.

45. (Hinkson ¶ 20) Mr. Hinkson claims that the "Judgment Register from which the page [defendants' Exhibit F or G] was taken was entered and filed in the Civil Court of the City of New York on March 14, 1973". This is something less than complete candor. See ¶ 43 and other ¶¶ referred to therein of this affidavit. The affidavit of Eugene L. St. Louis, sworn to January 29, 1975, reveals that the PVB is masquerading, poorly, as the Civil Court of the City of New York. The entry and filing referred to by Mr. Hinkson was in the hallway or storage area of his PVB at 51 Chambers Street, making it anything but a public record filed in the real Civil Court of the City of New York, which the judgments against plaintiff and the other members of the class are required to be. Otherwise, the PVB is acting illegally as an unconstitutional court, which defendants assert in their memorandum of law that they are permitted to let happen.

46. (Hinkson ¶ 21) This is an example of how the so-called "judgments" are repeatedly re-entered and re-rendered until the "judgments" are paid, in clear violation of the CPLR, which lists the requirements to be met before a judgment may be rendered or entered. No real court would permit the repeated entry of the same judgments, but this was necessary for the PVB because of the transient nature of its system of keeping judgment records. The PVB's court is not anything more than a computer which is fed two basic bits of data: issuance of a summons; payment of fines and penalties. The rest of this judicial system is totally automated, to spit out "judgments", "Judgment Registers", "entries", "renderings", "judgment rolls", etc., each time the computer button is pushed. The human element is totally lacking as well as

any method for obtain justice under the principles of constitutional law which have been upheld for so many years by the New York and federal courts. It is unthinkable that these courts could abandon these principles merely because of this statewide scheme for raising revenues from the motorist public without passing a tax statute.

47. (Hinkson ¶¶ 22-3) Defendants are not clear whether rendering or entry of the "judgments" is accomplished by the act of filing the computer printout with itself or some alleged court. Plaintiff needs discovery in this respect to be able to supply affidavits in opposition to defendants' motion for a summary judgment under Rule 12(b)(6) - a "speaking motion".

48. (Hinkson ¶ 24) Mr. Hinkson states that the

"Parking Violations Bureau maintains microfilm copies of all summonses upon which judgments have been rendered."

Plaintiff takes this to mean that the original Notice of Violation is destroyed by the PVB, contrary to the requirements of the CPLR which requires that the Notice of Violation be a part of the judgment roll. It seems obvious that defendants have not been preparing or filing any judgment roll, in violation of the CPLR. It should be noted that Mr. Dean, apparently in charge of the "judgments", states that the PVB keeps the documents underlying the "judgments", in obvious violation of the CPLR. See affidavit of Eugene L. St. Louis, sworn to January 29, 1975.

49. (Hinkson ¶ 24 Cont'd) It should be noted that the defendants have not produced copies of any "judgments" or of "final determinations sustaining or dismissing charges", even though to quote Mr. Hinkson:

"These records constitute the final determination (judgment) roll."

It appears that there is no "judgment roll" whatever created or filed for any judgment, contrary to the CPLR, nor could any judgment roll be created or filed

because of the destruction of the necessary documents or probable unavailability of the required records. See the accompanying Memorandum of Law, dated January 30, 1975 and the St. Louis Affidavit.

50. (Hinkson ¶ 25) It is not at all "clear that each and every judgment was rendered within the time prescribed", for reasons set forth at length above in this affidavit and in the accompanying Memorandum of Law, dated January 30, 1975.

51. (Hinkson ¶ 26) Mr. Goldin, as Comptroller of New York City, has authority over the General Fund to which the revenues of the PVB are transferred by the PVB. See page 4 of the accompanying Memorandum of Law, dated January 30, 1975. Thus, Mr. Goldin's presence as a defendant is warranted, in fact required, if plaintiff is to be able to get his money back.

52. (Hinkson ¶ 27) Although Mr. Hinkson himself did not receive and retain the moneys collected from plaintiff, he is responsible for the present effort to enforce the alleged unpaid "judgments" against plaintiff, and has the power (which he chooses not to exercise) of requesting that defendants Beame and Goldin authorize and direct a refund of such payments to be paid out of the General Fund of New York City, the fund which presumably received the payments of plaintiff as well as the other members of the class.

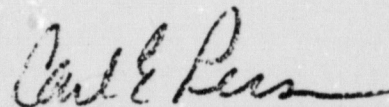
53. (Hinkson ¶ 28) Plaintiff does not at all agree that it is reasonable to treat defaulting parties different in all respects from complying parties. The fines should not differ, as one example. Case law supports this. See accompanying Memorandum of Law, dated January 30, 1975 at pages 2-4 and plaintiff's Memorandum of Law, dated January 21, 1975.

54. (Hinkson ¶ 29) Plaintiff denies that the fines and penalties not to exceed \$50 (including the \$25 in maximum added penalties) are reasonably calculated to require compliance with the administrative system and denies that they are reasonable on their face, for reasons set forth in plaintiff's two memoranda of law. The penalties are not applicable to the parking violations themselves, and therefore are unconstitutional for various good reasons. Also, the fines and penalties are not designed to regulate traffic, but to produce substantial revenues for New York City and other cities in New York State making use of the NY V&TL, Article 2-B, in violation of the well-settled principles of constitutional law.

55. (Hinkson ¶ 32) Plaintiff's allegations are based on a sufficient allegation of facts.

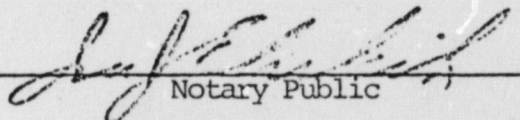
56. WHEREFORE, plaintiff respectfully requests that:

- (a) plaintiff's motion for the convening of a three-judge court be granted in its entirety;
- (b) plaintiff be granted discovery under Rule 56(f) to oppose defendants' motion to the extent it purports to be made under Rule 12(b)(6); and
- (c) defendants' motion to dismiss under Rules 12(b)(1) and 12(b)(6) be denied in its entirety.



Carl E. Person

Subscribed and sworn to before
me this 30th day of January, 1975.



Notary Public

IRA J. EHRLICH
NOTARY PUBLIC, State of New York
No. 31-4603212
Qualified in New York County
Commission Expires March 30, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PETER V. KEILEY,

Plaintiff,

-against-

ELBERT HINKSON, etc., et al.,

Defendants.

74 Civ. 5075 (IBW)

AFFIDAVIT

STATE OF NEW YORK)

: SS.:

COUNTY OF NEW YORK)

THOMAS DEAN, being duly sworn, does hereby depose and say:

1. Your deponent is employed by the Civil Court of the City of New York as a Court Clerk I, and assigned to the 51 Chambers Street, New York City annex, the Civil Court, County of New York.

2. The Civil Court maintains this facility as a repository for all judgments of the Parking Violations Bureau. It is freely accessible to the public and is frequently used by representatives of title companies, credit agencies and others interested in the current status of civil judgments entered by P.V.B.

3. This facility is located on the second floor at 51 Chambers Street, and its entrance is duly designated by a sign which clearly states as follows:

"CIVIL COURT OF THE CITY OF NEW YORK
JUSTICE EDWARD THOMPSON, ADMINISTRATIVE JUDGE
PHOENIX INGRAM, CHIEF CLERK
OFFICE OF THE CLERK"

4. The records consist of volumes of computer print-outs listing judgment debtors by name, together with microfilm cassettes which also contain lists of judgment debtors.

5. Your deponent is under the sole supervision of the Civil Court and not subject to the control or jurisdiction of P.V.B.

Thomas L. Dean
THOMAS L. DEAN

Sworn to before me this

21 day of January, 1975

Patrick J. Rooney
PATRICK J. ROONEY
Notary Public, State of New York
No. 0055600
Qualified in Bronx County
Term Expires March 30, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PETER V. KEILEY,

Plaintiff,

-against-

ELBERT HINKSON, etc., et al.,

Defendants.

: 74 Civ. 5075 (IBW)
:
: SUPPLEMENTAL AFFIDAVIT
: BY PLAINTIFF

STATE OF NEW YORK)

: ss.:

COUNTY OF NEW YORK)

PETER V. KEILEY, being duly sworn, does hereby depose and say:

1. I am the plaintiff herein, and make this affidavit in supplement to my affidavit sworn to January 30, 1975.

2. I would like to emphasize that I am not an "anarchist", as stated by the Court during oral argument, and I have always been prepared to pay any of my traffic tickets which were not previously paid by me. But nobody at any time would give me the information I requested about a \$525 payment by me on February 28, 1972, representing 27 tickets (covering a period ending February 28, 1972). See Exhibit A hereto, a copy of my certified check in the amount of \$525.00 dated February 28, 1972 (lic. plate # SM 8933). No information about the summonses represented by said payment of \$525.00 was ever supplied me by any person to this date. See Exhibit B hereto, a "Registration Clearance Notice", dated February 28, 1972, referring to the \$525.00 payment.

3. I am a Marine Corps veteran of the Korean War, having served as a sergeant (17 months in a combat zone) and having received an honorable discharge; I have 6 children and a wife, and have worked for a major corporation as an

investigator for the past 13 years and a major law firm for 6 years immediately prior thereto. I use my car on my investigations and, like others in New York City who are required to use their car making numerous stops in New York City, I have found it exceedingly difficult to avoid getting a traffic ticket from time to time.

4. On February 28, 1972, when I paid the \$525 to renew my motor vehicle registration, I was told by Joseph F. Fitzpatrick (see Exhibit B) that I had no other tickets outstanding. Yet, several months later, in July or August of 1972 (see Exhibit A annexed to my affidavit of January 30, 1975) Marshal Bruce Kemp demanded payment of \$470 plus costs from me. I advised Mr. Kemp that I had paid \$525 in parking tickets on February 28, 1972, and I showed him the cancelled certified check (Exhibit A hereto). However, Mr. Kemp told me that his office was not interested in any payments I had made and that they were only interested in the \$470 (plus costs) to be paid in full. Mr. Kemp gave me a copy of a computer print-out dated March 17, 1972 (Exhibit C hereto) dated only 3 weeks after my payment of the \$525. At this time I asked a female employee of the Marshal's Office whether any of the 11 tickets listed on Exhibit C were covered by the \$525 payment. I was told by her that the Marshal's Office was not concerned with the \$525 payment and, furthermore, that I should be prepared to make arrangements for the payment of the \$470 plus costs. This employee went into Marshal Kemp's Office and, after returning therefrom, told me that the "judgments" were at 111 Centre Street in the Civil Court. I went to 111 Centre Street, prior to August 15th, 1972, and found no judgments against me. This was my third or fourth visit to the Civil Court to find evidence of any judgments against me. I returned to the Marshal's Office the following day and advised him of my efforts and that I was unable to find any judgments entered against me. The Marshal's Office informed me that if I did not pay these judgments, they would take the necessary steps to enforce the judgments.

Whereupon, I made arrangements to pay off the \$470 (plus costs) over a period of time. On February 5, 1974, I finished paying off the "judgments", for a total amount of \$548.50, including the Marshal's fees.

5. In January, 1973, I was informed by the New York State Department of Motor Vehicles that my registration would not be renewed because of outstanding unpaid parking tickets. I went to the PVB at 44 Court Street, Brooklyn, NY, where I was presented with a computer print-out, dated December 20, 1972 (Exhibit D hereto) showing a total of \$2,030 in allegedly unpaid parking tickets covering a total of \$2,030 in allegedly unpaid parking tickets (August 3, 1970 to September 14, 1972). I advised the Manager of the PVB at 44 Court Street that some of the tickets appearing on Exhibit D were already paid by me or in the process of being paid (showing him Exhibit C). Actually, 8 of the tickets listed on Exhibit C appear on Exhibit D, for which I was being requested to make full payment. (These same 8 tickets appear with asterisks on defendants' Exhibit G WITHOUT ANY REFLECTION OF PAYMENT BY ME, indicating merely that "judgments" have previously been "rendered", prior to expiration of 2 years.) The Manager of the PVB informed me that I should see the cashier and pay the full \$2,030 after which I could request, in writing, an appeal before the PVB. He demanded that I make a second payment of the 8 "judgments" before being entitled to any appeal. I also produced the \$525 check (Exhibit A hereto), to which he said he was not interested.

6. On February 5, 1974, I received a "satisfaction" for full payment of the \$470 plus costs with respect to the 11 tickets listed on defendants' Exhibit F and my Exhibit C. See Exhibit E hereto, marked "Returned Fully Satisfied 2/5/74 Bruce Kemp, Marshal, City of New York". It was only upon my insistence that I received this "satisfaction". I understand that this "satisfaction" does not appear in any public records of the PVB or in the Civil Court or any alleged branch thereof, or in the County Clerk's Office.

7. A few short months after receiving this "satisfaction", on September 9, 1974, a letter was mailed to my home by the American Credit Bureau (see Exhibit A to my original affidavit) indicating that the PVB had obtained judgments in the amount of \$1,980 against me, the amount indicated on defendants' Exhibit G. I explained by telephone to Mr. Gray that I had paid some of the "judgments" already, but Mr. Gray said they were not interested in any previous payments I had made and that I was to pay the full amount; and if I had any overpayment, I could appeal it through the PVB, in writing. See Exhibit G hereto and Schedule I.

8. I have failed to pay the \$1,980 because I know that I have paid some of the "judgments", and I have sought diligently to obtain information as to all tickets and payments from various sources, including the PVB, the Civil Court records, the Marshal's Office, the American Credit Bureau and even by the attempt to have the Civil Court sign an order to show cause, on September 20, 1974. But I was unable to have the order signed, pursuant to the directions of Judge Thompson detailed in the affidavit of Carl E. Person, sworn to January 30, 1975, and I was unable to obtain any information about my prior payment and the identities represented thereby.

9. Prior to my discussion with Mr. Gray, I had spent about 4 days at the PVB, at 44 Court Street (in 1973) and about 3 days at 51 Chambers Street (in 1974) to obtain information about the alleged judgments making up a total alleged default of \$1980, but was unable to get any statement by the PVB as to the amounts of money I had paid on such judgments, and they ignored the "satisfaction" which I showed them, at 51 Chambers Street. They refused to give me a copy of the summonses. They said they were not interested in the satisfaction and were only interested in the \$1980 they alleged I owed the PVB. They said the \$1,980 was the most recent computer print-out and indeed it is, judging from ¶ 10 of the St. Louis affidavit, sworn to January 29, 1975, showing no change as of November 29, 1974.

9. In January, 1973, I had a 3-minute "hearing" at 44 Court Street before a black female of the PVB, who told me that I was to pay the full amount of \$2,030 after which I could appeal any such payment. I advised her that I was dissatisfied with her decision and requested an interview with the manager. I was prevented from seeing the manager by a security guard, who told me I could not speak with the manager. I proceeded to the manager's office anyway and was advised by a male "Assistant Manager" that the Manager would not have time for me inasmuch as the New York City Police were attempting to restore order at the PVB. I was directed to leave the office by a security guard and directed back to the rest of the milling crowd and told to see the cashier and pay the full amount. I left, and returned the following day at 7:00 A.M. and waited 2 hours until the PVB opened at 9:00 A.M., at which time I went directly to the Manager's Office. I advised him that I had paid \$525 in parking tickets and he said he was not interested; nor was he interested in the obvious duplication represented by the tickets I was in the process of paying off (8 of the 11 tickets on Exhibit C hereto). He told me to pay the full amount and ask in writing for an appeal.

10. This result was obviously produced by the failure of the PVB to follow the customary and normal procedures for the rendering and entry of judgments and the satisfaction thereof. The public is being mulcted, it would seem, of millions or tens of millions of dollars by this deliberate failure by all concerned to follow the statutory procedures enacted to prevent this very result.

11. Annexed hereto as Exhibit F hereto are copies of receipts for the payment of \$548.50 to Marshal Kemp.

Subscribed and sworn to before me
this 3rd day of February, 1975.

Carl E. Rees
Notary Public

Notary Public for New York
Qualified in New York County
Commission Expires March 30, 1975

Peter V. Keiley
Peter V. Keiley

SCHEDULE I

The following schedule shows the appearance of the same tickets on my Exhibits C and E (fully paid by me) and defendants' Exhibit G, my Exhibits D and G. Appearance on defendants' Exhibit G and my Exhibits D and G represents a continuing attempt to collect upon tickets previously paid by me (not including the tickets represented by the \$525 payment).

<u>Summons Number</u>	<u>Defendants Ex. G</u>	<u>My Ex. D</u>	<u>My Ex. G</u>
120972460	x	x	x
142942973	x	x	x
120195762	x	x	x
118405895	x	x	
140107181	x	x	x
145888186	x	x	x
111779010	x	x	
120369642	x	x	x

SM 8933 KATHLEEN M. KEILEY 4059628 No. 121
 67-80 EXETER STREET
 FOREST HILLS, N.Y. 11375

PAY TO THE ORDER OF Criminal Court of the City of NY Feb 28 1972 1-12 210
Five hundred and twenty five and 00/100 DOLLARS

CHEMICAL BANK
 107-36 71st Avenue
 Forest Hills, N.Y. 11375

Kathleen Keiley

⑆0210⑆0012⑆048⑆52660 ⑈0000052500⑈

OK For cash for P.V. Keiley -
 1500 on N.Y. TEL. 20
 R

L.B.
 CREDITED TO THE ACCOUNT OF
 THE WITHIN NAMED PAYEE
 IN ABSENCE OF ENDORSEMENT GUARANTEED

MAR 3 1972

CHEMICAL BANK

CHEMICAL BANK
 NEW YORK

EXHIBIT A

MV-6.3C (5/71)

STATE OF NEW YORK • DEPARTMENT OF MOTOR VEHICLES
REGISTRATION CLEARANCE NOTICE

LOCAL JURISDICTION
CRIMINAL COURT OF THE CITY OF NEW YORK

CASE NUMBER
4059628
PLATE NUMBER
SM8922

KEILEY, PETER, V
67-80 EXETER ST
FOREST HILLS NY 11375

27

525.00

I certify that the registrant named above has satisfied the requirements of this jurisdiction in connection with the case number indicated above.

FEB 28 1972

Date

Signature of Authorized Official

Joseph F. Fitzpatrick



Registrant was given renewal application.

LR ANSWER

P.O. BOX 57687

LR ANSWER

NOTICE TO REGISTRANT: This document is important. To renew your registration, bring it and all Registration Clearance Notices that you may have received from other jurisdictions, plus the renewal stub of your current registration, to any Motor Vehicle Issuing Office. If you received your preprinted renewal application from the Court, also bring it to the Issuing Office.

Do this as soon as possible. **ACT NOW!**

EXHIBIT B

PROGRAM # JS100-025

PARKING VIOLATION

JUKEA

PAGE 000553

CYCLE XX ENDING 03/15/72

JUDGMENT / SCOPFLA

SYSTEM

DATE 03/17/72

MONTHLY - OPEN JUDGMENTS - NAME SEQUENCE

NOTES	NAME/ADDRESS/ZIP	ST	PLATE #	TP	JUDGMENT	DATE	SUMMONS #	ISSUED	DOCKET #	CASE #	FINE	PNLTY	PAID	DUE
7A -->	KEILEY, PETER, V	67-80	EXETER ST		FOREST HILLS		11375							
	01 SM8933	16	00158181	11/01/71	29366145	02/11/71	2619342	10.00	25.00	.00	35.00			
	01 SM8933	16	00158182	11/01/71	23960141	10/22/70	1224168	10.00	25.00	.00	35.00			
	01 SM8933	16	00158183	11/01/71	00052363	08/24/70	0526407	15.00	25.00	.00	40.00			
	01 SM8933	16	00158184	11/01/71	18405895	11/18/70	1930156	25.00	25.00	.00	50.00			
	01 SM8933	16	00158185	11/01/71	11779010	08/03/70	0313215	25.00	25.00	.00	50.00			
	01 SM8933	16	00158186	11/01/71	20972460	11/10/70	1465192	15.00	25.00	.00	40.00			
	01 SM8933	16	00158187	11/01/71	20359642	09/18/70	0845583	15.00	25.00	.00	40.00			
	01 SM8933	16	00158188	11/01/71	20195762	08/17/70	0474391	15.00	25.00	.00	40.00			
	01 SM8933	16	00158189	11/01/71	145888185	03/03/71	864292	15.00	25.00	.00	40.00			
	01 SM8933	16	00158190	11/01/71	140107181	04/07/71	3387269	25.00	25.00	.00	50.00			
	01 SM8933	16	00158191	11/01/71	142942973	03/09/71	2917373	25.00	25.00	.00	50.00			
					TOTAL			195.00	275.00	.00	470.00			

PV 74

EXHIBIT C

11/11

PARKING VIOLATIONS BUREAU

PAGE 00-215

20/72

JUDGMENT/SCOFFLAW SYSTEM

DATE 12/20/72

MONTHLY - OPEN JUDGMENTS - NAME SEQUENCE

SS/ZIP	ST	PLATE #	TP	JUDGMENT	DATE	SUMMONS #	ISSUED	DOCKET #	CASE #	FINE	PALTY	PAID	D.F.
01	SM8933	16	00158184	11/01/71	118405895	11/18/70	530156			25.00	25.00	.00	50.00
TOTAL										905.00	1125.00	.00	2030.00

SS/ZIP	ST	PLATE #	JUDGMENT	DATE	SUMMONS #	ISSUED	CASE	FINE	PNLT	PAYD	CUE
R.V	67-80	EXETER	FOREST HILLS NY	11375	DSM	GOV					
01	SM8933	16	01995170	01/01/73	272554354	09/14/72	163734	25.00	25.00	.00	50.00
01	SM8933	16	01623742	11/06/72	270602764	08/04/72	102616	10.00	25.00	.00	35.00
01	SM8933	16	01711549	12/14/72	269953810	08/11/72	1428583	15.00	25.00	.00	40.00
01	SM8933	16	01552611	10/23/72	269893175	07/18/72	1042152	15.00	25.00	.00	40.00
01	SM8933	16	01108571	09/11/72	268021250	05/23/72	0193412	25.00	25.00	.00	50.00
01	SM8933	16	01108570	09/11/72	267810325	06/14/72	0566181	15.00	25.00	.00	40.00
01	SM8933	16	01103569	09/11/72	265745874	06/06/72	0422447	10.00	25.00	.00	35.00
01	SM8933	16	01108568	09/11/72	265197984	05/22/72	0174406	15.00	25.00	.00	40.00
01	SM8933	16	01995169	01/01/73	260215686	09/07/72	1793963	25.00	25.00	.00	50.00
01	SM8933	16	01108567	09/11/72	244327145	05/02/72	1799860	25.00	25.00	.00	50.00
01	SM8933	16	01108565	09/11/72	241256853	04/03/72	1227015	25.00	25.00	.00	50.00
01	SM8933	16	01711548	12/14/72	226530212	09/23/72	1576825	25.00	25.00	.00	50.00
01	SM8933	16	00158135	11/01/71	111774010	09/03/70	0313215	25.00	25.00	.00	50.00
01	SM8933	16	01597619	10/30/72	224524263	06/01/72	1240619	25.00	25.00	.00	50.00
01	SM8933	16	01468611	10/02/72	223526491	06/30/72	0744095	25.00	25.00	.00	50.00
01	SM8933	16	00444951	07/17/72	226585512	02/14/72	0254477	25.00	25.00	.00	50.00
01	SM8933	16	00444950	07/17/72	219857571	01/14/72	0724660	25.00	25.00	.00	50.00
01	SM8933	16	00444953	07/17/72	217560081	12/03/71	1117642	25.00	25.00	.00	50.00
01	SM8933	16	01108555	09/11/72	215490545	12/01/71	1177051	25.00	25.00	.00	50.00
01	SM8933	16	00444956	07/17/72	205758776	09/24/71	180753	25.00	25.00	.00	50.00
01	SM8933	16	01108564	09/11/72	199776113	04/18/72	1510876	15.00	25.00	.00	40.00
01	SM8933	16	00444955	07/17/72	194341383	02/09/72	1217574	10.00	25.00	.00	35.00
01	SM8933	16	00444954	07/17/72	193992492	02/22/72	1438916	10.00	25.00	.00	35.00
01	SM8933	16	00444953	07/17/72	192769010	01/04/72	1554559	25.00	25.00	.00	50.00
01	SM8933	16	00444952	07/17/72	184257636	06/30/71	1658420	25.00	25.00	.00	50.00
01	SM8933	16	00444951	07/17/72	184222194	06/01/71	1241207	25.00	25.00	.00	50.00
01	SM8933	16	00444950	07/17/72	182612426	07/06/71	1723461	25.00	25.00	.00	50.00
01	SM8933	16	00444949	07/17/72	179513902	12/01/71	1995158	15.00	25.00	.00	40.00
01	SM8933	16	00444948	07/17/72	178853544	07/08/71	1593354	25.00	25.00	.00	50.00
01	SM8933	16	00444947	07/17/72	178218740	07/12/71	1001176	25.00	25.00	.00	50.00
01	SM8933	16	00444946	07/17/72	174768543	08/10/71	1221307	25.00	25.00	.00	50.00
01	SM8933	16	00444945	07/17/72	166514846	11/23/71	1903078	15.00	25.00	.00	40.00
01	SM8933	16	00444944	07/17/72	166407584	11/10/71	1665126	15.00	25.00	.00	40.00
01	SM8933	16	00444943	07/17/72	167045725	10/26/71	1420044	15.00	25.00	.00	40.00
01	SM8933	16	00444942	07/17/72	167003735	10/08/71	1587449	15.00	25.00	.00	40.00
01	SM8933	16	00444941	07/17/72	163894921	09/20/71	1817967	15.00	25.00	.00	40.00
01	SM8933	16	00158189	11/01/71	145868186	03/03/71	1144292	15.00	25.00	.00	40.00
01	SM8933	16	00158191	11/01/71	142942973	03/09/71	1117373	25.00	25.00	.00	50.00
01	SM8933	16	00158190	11/01/71	140107181	04/07/71	1387247	25.00	25.00	.00	50.00
01	SM8933	16	00158186	11/01/71	120972460	11/10/70	145192	15.00	25.00	.00	40.00
01	SM8933	16	00158187	11/01/71	120364442	09/18/70	1455381	15.00	25.00	.00	40.00
01	SM8933	16	00158188	11/01/71	120175762	08/17/70	1474391	15.00	25.00	.00	40.00

EXHIBIT E

AM # JS100-025

XX ENDING 03/15/72

PARKING VIOLATIONS BUREAU

JUDGMENT / SCOFFLAW SYSTEM

PAGE 000533

DATE 03/17/72

MONTHLY - OPEN JUDGMENTS - NAME SEQUENCE

NAME/ADDRESS/ZIP	ST	PLATE #	IP	JUDGMENT	DATE	SUMMONS #	ISSUED	DECRET #	CASE #	FINE	PNLTY	PAID	DUE
-> KEILEY, PETER, V	67	70	EXETER	ST	-FOREST HILLS NY	11375							
	01	SM8933	16	00153181	11/01/71	129366145	02/11/71	2619342		10.00	25.00	.00	35.00
	01	SM8933	16	00158182	11/01/71	123960141	10/22/70	1224168		10.00	25.00	.00	35.00
	01	SM8933	16	00158183	11/01/71	100052363	08/24/70	0526407		15.00	25.00	.00	40.00
	01	SM8933	16	00158184	11/01/71	118405895	11/18/70	1530156		25.00	25.00	.00	50.00
	01	SM8933	16	00158185	11/01/71	111779010	08/03/70	0313215		25.00	25.00	.00	50.00
	01	SM8933	16	00158186	11/01/71	120972660	11/10/70	1465192		15.00	25.00	.00	40.00
	01	SM8933	16	00158187	11/01/71	120369642	09/18/70	0845583		15.00	25.00	.00	40.00
	01	SM8933	16	00158188	11/01/71	120195762	08/17/70	0474391		15.00	25.00	.00	40.00
	01	SM8933	16	00158189	11/01/71	145888186	03/03/71	2664292		15.00	25.00	.00	40.00
	01	SM8933	16	00158190	11/01/71	140107181	04/07/71	3387269		25.00	25.00	.00	50.00
	01	SM8933	16	00158191	11/01/71	142942973	03/09/71	2917373		25.00	25.00	.00	50.00
TOTAL										195.00	275.00	.00	470.00

RETURNED FULLY

SATISFIED

2/5/74
Bruce Kemp
Deputy, City of New York

RETURNED FULLY

SATISFIED

Deputy, City of New York

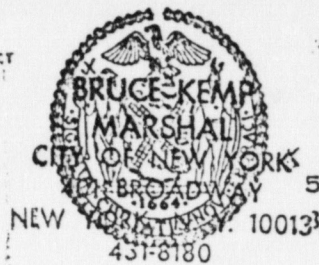
Index No. Year 19
CIVIL COURT OF THE CITY OF NEW YORK

BOROUGH OF DISTRICT

City of NY (PVB) Plaintiff

VS.

Peter V. Keiley Defendant



No 39417 134

OFFICE OF
HENRY KEMP
MARSHAL
CITY OF NEW YORK
501 EAST 161ST ST.
CYPRESS 2-5350

New York, 8/15 1972

Received from above Defendant One hundred \$ 100.00

Part Payment of judgment and cost of the above entitled action.

Refer To #G PV 74

Bruce Kemp
MARSHAL
CITY OF NEW YORK

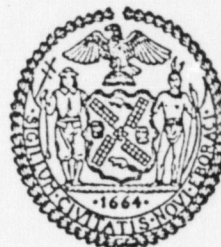
Index No. Year 197
CIVIL COURT OF THE CITY OF NEW YORK

COUNTY OF

Parading Violations Plaintiff

VS.

Peter V. Keiley Defendant



OFFICE OF
BRUCE KEMP
MARSHAL
CITY OF NEW YORK
401 BROADWAY
NEW YORK, N. Y. 10013
431-8180

New York, 9-11-72 19

Received from above Defendant twenty five \$ 25.00

Part Payment of judgment and cost in the above entitled action.

Refer To #G PV 74

Bruce Kemp
MARSHAL
CITY OF NEW YORK

Index No. Year 19
CIVIL COURT OF THE CITY OF NEW YORK

BOROUGH OF DISTRICT

City of NY PVB Plaintiff

VS.

Peter V. Keiley Defendant



No 38797
BRUCE KEMP
OFFICE OF
MARSHAL
CITY OF NEW YORK
401 BROADWAY
NEW YORK, N. Y. 10013
431-8180
CYPRESS 2-5350

New York, 10/2 1972

Received from above Defendant Twenty five \$ 25.00

Part Payment of judgment and cost of the above entitled action.

Refer To #G PV 74

Bruce Kemp
MARSHAL
CITY OF NEW YORK

Index No. Year 197
CIVIL COURT OF THE CITY OF NEW YORK

135

COUNTY OF

City of N.Y. (PVB)
Plaintiff

vs.
Keiley, Peter V.
Defendant



OFFICE OF
BRUCE KEMP
MARSHAL
CITY OF NEW YORK
401 BROADWAY
NEW YORK, N. Y. 10013
431-8180

Received from above Defendant *Twenty five* ⁰⁰/₁₀₀ New York *11/30/1972*
\$ *25.00*

~~Part~~ Payment of judgment and cost in the above entitled action.

Refer To # *PV 74*

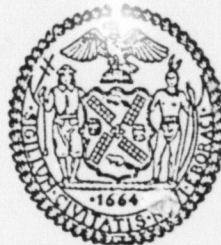
Bruce Kemp
MARSHAL
CITY OF NEW YORK

Index No. Year 197
CIVIL COURT OF THE CITY OF NEW YORK

COUNTY OF

Parking Violation
Plaintiff

vs.
Peter Keiley
Defendant



OFFICE OF
BRUCE KEMP
MARSHAL
CITY OF NEW YORK
401 BROADWAY
NEW YORK, N. Y. 10013
431-8180

Received from above Defendant *Twenty five* ⁰⁰/₁₀₀ New York *1/15 1973*
\$ *25.00*

~~Part~~ Payment of judgment and cost in the above entitled action.

Refer To # *PV 74*

Bruce Kemp
MARSHAL
CITY OF NEW YORK

Index No. Year 197
CIVIL COURT OF THE CITY OF NEW YORK

COUNTY OF *Ny*

City of N.Y. (PVB)
Plaintiff

vs.
Peter V. Keiley
Defendant



OFFICE OF
BRUCE KEMP
MARSHAL
CITY OF NEW YORK
401 BROADWAY
NEW YORK, N. Y. 10013
431-8180

Received from above Defendant *Twenty five* ⁰⁰/₁₀₀ New York *2/15 1973*
\$ *25.00*

~~Part~~ Payment of judgment and cost in the above entitled action.

Refer To # *PV 74*

Bruce Kemp
MARSHAL
CITY OF NEW YORK

Index No. Year 197
CIVIL COURT OF THE CITY OF NEW YORK

136

COUNTY OF Ny

(PVB) City of Ny

Plaintiff

Peter v. Keiley

Defendant



OFFICE OF
BRUCE KEMP
MARSHAL
CITY OF NEW YORK
401 BROADWAY
NEW YORK, N. Y. 10013
431-8180

New York

3/20 1973

Received from above Defendant

Twenty Five

\$ 25.00

Part

Payment of judgment and cost in the above entitled action.

Refer To # PV 74

Bruce Kemp
MARSHAL
CITY OF NEW YORK

Index No. Year 197
CIVIL COURT OF THE CITY OF NEW YORK

COUNTY OF King

City of NY (PVB)

Plaintiff

VS.

Peter v. Kelly

Defendant



OFFICE OF
BRUCE KEMP
MARSHAL
CITY OF NEW YORK
401 BROADWAY
NEW YORK, N. Y. 10013
431-8180

New York

4/18 1975

Received from above Defendant

Twenty five

\$ 25.00

Part

Payment of judgment and cost in the above entitled action.

Refer To # PV 74

Bruce Kemp
MARSHAL
CITY OF NEW YORK

Index No. Year 197
CIVIL COURT OF THE CITY OF NEW YORK

COUNTY OF

Parking Violations B.

Plaintiff

VS.

Peter Keiley

Defendant



OFFICE OF
BRUCE KEMP
MARSHAL
CITY OF NEW YORK
401 BROADWAY
NEW YORK, N. Y. 10013
431-8180

New York

May 16th 1973

Received from above Defendant

Twenty five

\$ 25.00

Part

Full Payment of judgment and cost in the above entitled action.

Refer To #G

Bruce Kemp
MARSHAL
CITY OF NEW YORK

Index No. Year 197
CIVIL COURT OF THE CITY OF NEW YORK

COUNTY OF Kings

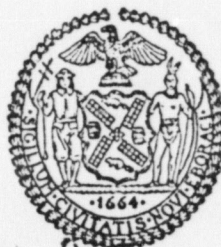
City of NY (P.B.) Plaintiff
VS.
Peter V. Keiley Defendant

CR # 136

Received from above Defendant fifty

Part ~~Full~~ Payment of judgment and cost in the above entitled action.

Refer To #G. PV.74



OFFICE OF
BRUCE KEMP
MARSHAL
CITY OF NEW YORK
401 BROADWAY
NEW YORK, N. Y. 10013
431-8180

New York 9-6 19 73

\$ 50.00

Bruce Kemp
MARSHAL
CITY OF NEW YORK

Index No. Year 19 73
CIVIL COURT OF THE CITY OF NEW YORK

BOROUGH OF Bklyn DISTRICT

PVB (City of NY) Plaintiff
VS.
Peter V. Keiley Defendant



N^o 39165
BRUCE KEMP
MARSHAL
CITY OF NEW YORK
401 BROADWAY
NEW YORK, N. Y. 10013
CYP 431-8180350

New York 2/5 19 74

Received from above Defendant one hundred + ninety eight 98.50

Full Payment of judgment and cost of the above entitled action.

Refer To #G. PV74

Bruce Kemp
MARSHAL
CITY OF NEW YORK

C. S. 0223 02293 16 KEILEY, PETER, V 67-80 EXETER ST FOREST HILLS NY 11375				11375									
NO	DOCKET	ISSUE	FEE PM	PAYMENT	DUE	NO	DOCKET	ISSUE	FEE PM	PAYMENT	DUE		
120195762	00474321	00170	15	25	40 02234	00	120369642	00540583	09180	15	25	40 10233	00
120972400	01435192	11100	15	25	15 05273	25	145000186	02860222	03031	15	25	40 02284	00
142942973	0217373	03091	25	25	50 02234	00	140107181	03367259	04071	25	25	50 02284	00
184222154	04241207	04011	25	25	00	50	108257636	04656420	06301	25	25	00	50
182612426	04723451	07051	25	25	00	50	178353544	04709359	07031	25	25	00	50
178218740	04001173	07121	25	25	00	50	174760543	05221207	05101	25	25	00	50
162905721	03017967	07201	15	25	00	40	205760773	05062745	04241	25	25	00	50
167003745	06150743	10031	15	25	00	40	207474746	05180793	10141	25	25	00	50
167045723	08420044	10261	15	25	00	40	138407534	05169120	11101	15	25	00	40
212323070	05401210	11141	15	25	00	40	160519046	04000703	11231	15	25	00	40
175513702	06075073	12011	15	25	00	40	217510001	07111442	12091	25	25	00	50
215605565	07137740	12011	15	25	00	50	192769010	04500120	01042	25	25	00	35
219307391	01124560	01142	25	25	00	50	194341303	00217071	04092	10	25	00	35
220505612	03225977	02142	25	25	00	50	193592002	04030915	07222	10	25	00	40
210251653	09227015	04032	25	25	00	50	199776113	07100175	00162	15	25	00	40
210327145	07799010	05082	25	25	00	50	205197971	00170016	07222	15	25	00	35
21031270	05193062	05232	25	25	00	50	225747074	00422447	01062	10	25	00	35
257010525	05141181	06142	15	25	00	40	22072601	00000000	04002	25	25	00	50
260031175	01047152	07182	15	25	00	40	220121043	01111010	00012	25	25	00	40
210402764	01302616	00042	10	25	00	35	207753010	01020703	00142	15	25	00	50
270530212	01576007	07222	25	25	00	50	200215116	01790913	01042	25	25	00	50
272574354	01963131	00142	25	25	00	50	21023074	07107911	10062	25	25	00	50
270930354	02727669	10302	25	25	00	50	220039702	01174501	11022	25	25	00	50
307426711	03184650	11212	25	25	00	50	240042074	00514797	12212	25	25	00	50
311142016	04330923	01083	10	25	00	3							
PAID-SUMMONS 05 PAID-AMOUNT 235 TOTAL DUE 1900				SUMMONS 44 TOTAL AMOUNT DUE 1900									

Please contact me immediately upon receipt!

1. Doctor
Perkins
of
475 Park Avenue
NYC

931-3657 ext. 56

Joseph Gray

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
PETER V. KEILEY,

Plaintiff,

-against-

ELBERT HINKSON, et al.,

Defendants.
-----x

AFFIDAVIT

74 Civ. 5075 (IBW)

STATE OF NEW YORK)
 : SS.:
COUNTY OF NEW YORK)

ELLIOT R. PRESS, being duly sworn deposes and says:

In accordance with the Court's direction to supply additional documentation in support of the defendants' motion to dismiss under Rule 12, we submit the following exhibits:

Exhibit "1": A record of the Parking Violations Bureau known as a "Scofflaw Certification", dated December 5, 1973 and filed in the Civil Court on December 19, 1973, shows a complete list of all summonses issued against plaintiff herein. This document further shows the date judgment was rendered on each summons and indicates if payment was made.

Exhibit "2" annexed hereto was obtained by your deponent on February 3, 1975, at the Office of the Parking Violations Bureau, 51 Chambers Street, New York, N.Y. and shows the current status of all summonses issued against the plaintiff and further shows the payments received and date.

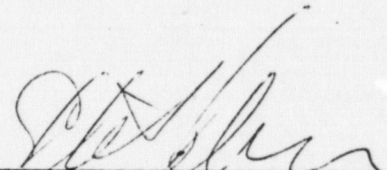
Exhibit "2" shows payment of six summonses on judgments which were entered within two years of the issuance of the summons. In each and every instance, a judgment was rendered and filed with the Civil Court within two years pursuant to law.

For the Court's information, dates of payment are indicated in Exhibit "2", in Column 7 & 15 in five digits, the last digit being the year.

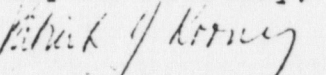
In response to the Court's request for identification of the judgments upon which an execution was issued (Plaintiff's Exhibit "A"), by Marshall Bruce Kemp, Exhibits "3" and "4" are annexed hereto.

Exhibit "3" is a Memorandum dated February 4, 1975 transmitting the information relating to the execution to your deponent.

Exhibit "4" is a computer print-out obtained from Marshall Kemp's office which identifies the judgments upon which the execution issued. It should be noted that the judgments satisfied are listed in Defendants' Exhibit "G", and were all rendered and filed within two years.


ELLIOT R. PRESS

Sworn to before me this
4th day of February, 1975


Notary Public, New York

Commission Expires March 30, 1976

LN DATE - 12/05/73

PARKING VIOLATIONS BUREAU

PAGE 4,383
141

ALBANY SCOFFLAW CERTIFICATION

REPORT F 560

PLATE # ST TP NAME & ADDRESS
518933 01 16 KEILEY, PETER, V

JUDGMENT CREDITS IN PLATE SEQUENCE
67-80 EXETER ST FOREST HILLS NY 11375

JUDGMENT NUMBER	DATE	SUMMONS NUMBER	DOCKET NUMBER	ISSUE DATE	FINE AMT.	PNLTY AMT.	PAID AMOUNT	CREDIT	DUE
000158188	11/01/71	120195762	00474391	03/17/70	15	25	40	40	35
000158186	11/01/71	120972460	01465192	11/10/70	15	25	15	15	25
000158189	11/01/71	145938186	02864292	03/03/71	15	25			40
000158191	11/01/71	142942973	02917373	03/09/71	25	25			50
000158190	11/01/71	140107181	03387269	04/07/71	25	25			50
000444951	07/17/72	184222194	04241807	06/01/71	25	25			50
000444952	07/17/72	184257636	04658420	06/30/71	25	25			50
000444950	07/17/72	182612426	04723461	07/06/71	25	25			50
000444948	07/17/72	178353544	04759359	07/08/71	25	25			50
000444947	07/17/72	178218740	04801176	07/12/71	25	25			50
000444946	07/17/72	174768543	05221307	08/10/71	25	25			40
000444941	07/17/72	163398921	05817967	09/20/71	15	25			50
000444956	07/17/72	205768776	05862745	09/24/71	25	25			40
000444942	07/17/72	167003745	06158748	10/03/71	15	25			50
000444957	07/17/72	207474746	06180753	10/14/71	25	25			40
000444943	07/17/72	167046725	03420044	10/26/71	15	25			40
000444944	07/17/72	168407534	06665128	11/10/71	15	25			40
000444958	07/17/72	212323020	06681270	11/14/71	15	25			40
000444945	07/17/72	168514846	06903078	11/23/71	15	25			40
000444949	07/17/72	179513902	06995158	12/01/71	15	25			50
000444959	07/17/72	217560081	07117642	12/03/71	25	25			50
001108565	09/11/72	215690565	07137949	12/09/71	25	25			50
000444953	07/17/72	192769010	07554559	01/04/72	25	25			50
000444960	07/17/72	219889891	07724660	01/14/72	25	25			35
000444955	07/17/72	194341383	08217574	02/09/72	10	25			50
000444961	07/17/72	226585612	08254977	02/14/72	25	25			35
000444954	07/17/72	193992492	08438916	02/22/72	10	25			50
001108566	09/11/72	241256853	09227015	04/03/72	25	25			40
001108564	09/11/72	199776113	09570876	04/18/72	15	25			50
001108567	09/11/72	244327145	09799860	05/02/72	25	25			40
001108568	09/11/72	265197984	00174406	05/22/72	15	25			50
001108571	09/11/72	268021250	00193412	05/23/72	25	25			35
001108569	09/11/72	265745874	00422447	06/06/72	10	25			40
001108570	09/11/72	267810325	00566181	06/14/72	15	25			50
001468671	10/02/72	228526491	00794095	06/30/72	25	25			40
001552611	10/23/72	2698893175	01042152	07/18/72	15	25			50
001599619	10/30/72	228528263	01248619	08/01/72	25	25			35
001623742	11/06/72	270682764	01302676	08/04/72	10	25			40
001711549	12/14/72	269953810	01428503	09/11/72	15	25			50
001711548	12/14/72	228530212	01576825	08/23/72	25	25			50
001995169	01/01/73	270215606	01793963	09/07/72	25	25			50
001995170	01/01/73	272554354	01963134	09/14/72	25	25			50
002111558	01/29/73	261826972	02287991	10/06/72	25	25			50
002234069	02/26/73	226538354	02724669	10/30/72	25	25			50
002234070	02/26/73	228538402	02724641	11/02/72	25	25			50

EWING, NY

LN DATE - 12/05/73

PARKING VIOLATIONS BUREAU

PAGE 4,384

JAN DATE - 12/05/73

PARKING VIOLATIONS BUREAU

PAGE 4,384

ALBANY SCOFFLAW CERTIFICATION

REPORT F 560

PLATE # ST TP NAME & ADDRESS JUDGMENT CREDITS IN PLATE SEQUENCE
 878933 01 16 KEILEY, PETER, V 67-80 EXETER ST FOREST HILLS NY 11375

JUDGMENT NUMBER	DATE	SUMMONS NUMBER	DOCKET NUMBER	ISSUE DATE	FINE AMT.	PNLTY AMT.	PAID AMOUNT	CREDIT	DUE
002234071	02/26/73	307426711	03186690	11/21/72	25	25			50
002458354	03/26/73	240042034	03514799	12/21/72	25	25			50
003048491	05/28/73	311142016	04330923	02/08/73	10	25			35
TOTAL PLATE 48 JUDGMENTS					975	1,200	19	19	2,156

FILED
 CLERK'S OFFICE

DEC 19 1973

CIVIL COURT OF THE
 CITY OF NEW YORK

N.Y.C. 13-900M-414228(67) 346

THE CITY OF NEW YORK
Intradepartmental MemorandumTo: *Elliot Press Ant C.C.*Date: *4/4/75*From: *Jay E. Smalls*Subject: *Peter V. Keiley*

Enclosed is photocopy of file
received from Marshal Bruce Kemp
401 B'dway - If further info is needed
I suggest calling Mrs. Marcus of that
office 431-8180

J. Smalls

EXHIBIT 3

EXHIBIT

PV74

JS100-025

PARKING VIOLATIONS BUREAU

PAGE 000553

XX ENDING 03/15/72

JUDGMENT / SCOFFLAW SYSTEM

DATE 03/17/72

MONTHLY - OPEN JUDGMENTS - NAME SEQUENCE

NAME/ADDRESS/ZIP	ST	PLATE #	TP	JUDGMENT	DATE	SUMMONS #	ISSUED	DUCKET #	CASE #	FINE	PNLTY	PAID	DUE
KEILEY, PETER, V	67-80	EXETER ST		FOREST HILLS NY	11375								
	01	SM8933	16	00158181	11/01/71	129366145	02/11/71	2619342		10.00	25.00	.00	35.00
	01	SM8933	16	00158182	11/01/71	123960141	10/22/70	1224168		10.00	25.00	.00	35.00
	01	SM8933	16	00158183	11/01/71	100052363	03/24/70	0526407		15.00	25.00	.00	40.00
	01	SM8933	16	00158184	11/01/71	119405895	11/18/70	1530156		25.00	25.00	.00	50.00
	01	SM8933	16	00158185	11/01/71	111779010	08/03/70	0313215		25.00	25.00	.00	50.00
	01	SM8933	16	00158186	11/01/71	120972460	11/10/70	1465192		15.00	25.00	.00	40.00
	01	SM8933	16	00158187	11/01/71	120369642	09/18/70	0845553		15.00	25.00	.00	40.00
	01	SM8933	16	00158188	11/01/71	120195762	08/17/70	0474391		15.00	25.00	.00	40.00
	01	SM8933	16	00158189	11/01/71	145388186	03/03/71	2664292		15.00	25.00	.00	40.00
	01	SM8933	16	00158190	11/01/71	140107181	04/07/71	3387269		15.00	25.00	.00	40.00
	01	SM8933	16	00158191	11/01/71	142942973	03/09/71	2917373		25.00	25.00	.00	50.00
						TOTAL				195.00	275.00	.00	470.00

RETURNED FULLY
SATISFIED4-574
Marshal

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

PETER V. KEILEY,	:	74 Civ. 5075 (IBW)
Plaintiff,	:	<u>REPLY AFFIDAVIT</u>
-against-	:	
ELBERT HINKSON, etc., et al.,	:	
Defendants.	:	

-----X

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

CARL E. PERSON, being duly sworn, does hereby depose and say:

1. I am one of the attorneys for plaintiff, and make this affidavit in reply to the affidavit of Elliot R. Press, sworn to February 4, 1975, in further opposition to defendants' motion to dismiss and in further support of plaintiff's motion for the convening of a three-judge court.

2. The affidavit of Mr. Press, sworn to February 4, 1975 at page 1 thereof states that Exhibit '1' thereto "shows a complete list of all summonses issued against plaintiff herein ... and indicates if payment was made." That statement is absolutely false. Said Exhibit does not include the following tickets:

<u>No.</u>	<u>Issue Date</u>	<u>Summons Number</u>
1	08/03/70	111779010
3	08/24/70	100053263
4	09/18/70	120369642
5	10/22/70	123960141
7	11/18/70	118405895
8	02/11/71	129366145

3. The affidavit of Mr. Press is also erroneous in its statement that "This document ... indicates if payment was made." The document (Press Exhibit 1) shows payments amounting to only \$19 -- disregarding the "0" erroneously inserted by hand. Plaintiff, Peter V. Keiley, in his affidavit sworn to February 3, 1975, testified that he paid Marshal Bruce Kemp, for the account of the PVB, an aggregate of \$548.50; also, Mr. Keiley swears that he paid \$525 to the Criminal Court of the City of New York on February 28, 1972. In other words, at the date of said Exhibit 1 of Mr. Press, Mr. Keiley had paid a total of \$175 (from 8/15/72 to 11/30/72) plus the \$525 paid to the Criminal Court. See Exhibit A hereto, entitled "Payments by Peter V. Keiley - By Date" which summarizes Exhibit F to Mr. Keiley's affidavit.

4. Exhibit 2 to Mr. Press' affidavit purports to "show... the current status of all summonses issued against the plaintiff and further shows the payments received and date." Once again, this is absolutely false. Exhibit 2 of Mr. Press' affidavit shows payments of only \$135 as of 12/09/74. Compare Exhibit A hereto, which shows that Mr. Keiley paid \$548.50 to Marshal Bruce Kemp and \$525 to the Criminal Court of the City of New York. Furthermore, said Exhibit 2 of Mr. Press' affidavit does not list the following summonses purportedly issued to Mr. Keiley:

<u>No.</u>	<u>Issue Date</u>	<u>Summons Number</u>
1	08/03/70	111779010
3	08/24/70	100053263
5	10/22/70	123960141
7	11/18/70	118405895
8	02/11/71	129366145

5. In fact, Press Exhibit 2 shows that \$25 is due on summons number 120972460 issued 11/10/70, as of 12/09/74, even though Press Exhibit 4, dated 03/17/72, is stamped "Returned Fully Satisfied" as to such ticket and 10 others, as of 2/5/74.

* See Exhibit D for a listing of (-2-)
each of plaintiff's alleged tickets

6. At page 2 of his affidavit, Mr. Press states that "Exhibit '2' shows payment of six summonses on judgments". Actually, such Exhibit, dated 12/09/74, should have picked up the payment of the 11 "judgments" by Mr. Keiley, as evidenced in Mr. Press' Exhibit 4, dated 03/17/72 and marked "Returned Fully Satisfied".

7. Mr. Press states that his Exhibits "3" and "4" identify the "judgments" upon which an execution was based. It should be noted that said Exhibit 4, dated 03/17/72, does not bear the signature or stamp of Howard F. Tyson, Chief Clerk (as of November, 1971) of the Civil Court of the City of New York and notation: "Judgments Entered in accordance with the above". (See Exhibit F to Mr. Hinkson's affidavit, a copy of the same computer print-out, dated 08/13/71, bearing such entries.) The Marshal is not using copies of the actual judgments allegedly entered as his basis for collection.

8. Exhibits 3 and 4 to the Press affidavit show that the PVB as of the day before this affidavit (2/4/75) did not have the alleged satisfaction of judgment represented by Exhibit 4, which was apparently obtained today from Marshal Bruce Kemp, which information about satisfaction was heretofore entered in his office only, it would seem. We might also note that the stamp "Returned Fully Satisfied, Marshal, City of New York" placed on said Exhibit 4 is different from the stamp placed on the copy of such document given to Mr. Keiley. The handwritten date is of a different style and handwriting and Mr. Kemp's purported signature appears on Press' Exhibit 4 only. Apparently, these two documents were created at two different times. Mr. Keiley testifies that neither the PVB nor the American Credit Bureau accepted this "Satisfaction" as a valid instrument; and, indeed, there was no way by which plaintiff could file his copy.

9. Defendants maintain that the PVB is not a court but that the PVB is entering judgments against plaintiff in a court -- Civil Court of the City of New York. This contention is directly repudiated by Judge Edward Thompson, the Administrative Judge of the Civil Court of the City of New York who in his Memorandum No. 208, dated August 31, 1972, stated that the PVB judgments are not judgments of his court. Judge Thompson takes this position because his court does not possess the underlying records with respect to the judgments. Specifically, Judge Thompson stated:

"DIRECTIVE TO JUDGES AND CLERKS

"RE: MOTIONS PERTAINING TO PARKING VIOLATIONS BUREAU (PVB)

"Orders to show cause concerning any judgment sought or obtained by the Parking Violations Bureau (PVB) shall not be signed. This Court does not possess the underlying records of the PVB, and therefore is not in a position to judge the truth or falsity of the averments made in the moving papers.

"PVB procedure regulates its own motions, and counsel should be advised to make such motions returnable at the Parking Violations Bureau, 475 Park Avenue South, New York, N. Y. 10016. Such motions will be heard before a PVB hearing officer.

* * *

"If a motion is brought in this court by ordinary notice of motion, it should be denied without prejudice and with leave to renew before the PVB.

"Do not be misled by the fact that the papers presented to you may recite that the PVB judgment in question was or will be entered in the Civil Court. Such entry is pro forma and only designed to allow levy and execution by City Marshals and for no other purpose. As such they are not judgments of this court.

"EDWARD THOMPSON, J. S. C.
"Administrative Judge

"Dated: August 31, 1972"

A copy of said Memorandum No. 208 is annexed hereto as Exhibit B. This memorandum (the existence of which was disclosed in ¶ 8 of the Keiley affidavit, sworn to February 3, 1975, ¶ 16 of the Keiley affidavit, sworn to January 30, 1975 and ¶ 34 of the Person affidavit, sworn to January 30, 1975) was obtained by affiant on February 4, 1975 from Phoenix Ingraham, Chief Clerk of the Civil Court of the City of New York, 111 Centre Street, New York, N.Y.

10. It is obvious that the PVB is an illegal court, hiding behind the facade of a constitutional court, while at the same time the latter specifically disavows the activities, including the judgments, of the PVB. Inasmuch as the "judgments" are not judgments of the Civil Court of the City of New York, such "judgments" must be judgments of the PVB, and therefore the PVB is an illegal court, in violation of the doctrine of separation of powers and the New York State Constitution. See plaintiff's memorandum of law, dated January 21, 1975.

11. The PVB is a revenue-producing agency set up by the New York State Legislature under the guise of a court and empowered (without standards or criteria, I might add) to assess outrageous fines and penalties under the cloak of judicial responsibility. The stepped up penalties have no relationship to the violations committed. See Exhibit 1 to the Press affidavit which shows that on 48 alleged judgments, Mr. Keiley is being required to pay \$1,200 in stepped-up penalties with respect to only \$975 in basic "fines".

12. The problems faced by Mr. Keiley and millions of others are the direct result of the violation of this doctrine of separation of powers. As an unconstitutional court, the PVB has wilfully failed to abide by the rules governing a constitutional court -- the CPLR with respect to the rendering, entry, filing, docketing and satisfaction of judgments.

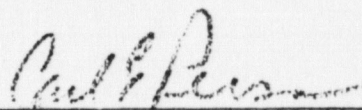
13. The PVB procedures are creating havoc with the judicial system in the State of New York. It's judgments are presently being docketed as liens in the County Clerk's Offices in all counties in New York City (see Exhibit C hereto, relating to plaintiff), which affects title to real property* and has extra-territorial effect. Furthermore,

* Including plaintiff's title to his home in Queens, NY

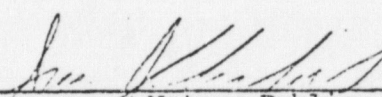
the judgments so docketed are open-ended and catch after-acquired tickets.^{**}

The judgments are rendered and re-rendered, so that the judgment debtor such as plaintiff is truly unable to ascertain how much he really owes, nor can the PVB produce this information when directed to do so by this Court. Twenty years from now, the consequences for property owners in New York City will be disastrous, particularly because the Civil Court itself does not even have the documents to show against whom the judgments have been entered (is it father or son having the same name?) or the basis for the entry of such judgments. The costs to be borne by future property owners will be horrendous, particularly because of the mounting interest charges. Documents reflecting payment of judgments may well be thrown away by retiring Marshals. Satisfactions are not being filed. And the judgments themselves are not identified except the number of judgments and the dollar amount in the aggregate. This can hardly be considered due process.^{**} (See Exhibit C, which creates the "open end" potential because of the continuing accumulation of unpaid "judgments".)

14. In short, the Civil Court is no more than a storage area for computer print-outs of the PVB if in fact they are even filed in the Civil Court. Nonetheless, the powers of the Civil Court are ruthlessly exploited by the PVB, including the issuances of property executions and other forms of process against alleged traffic law violators in the name of the Civil Court. (See Exhibit A to the Keiley affidavit, sworn to January 30, 1975.)


 Carl E. Person

Subscribed and sworn to before
 me this 5th day of February, 1975.


 Notary Public
 ANNA J. EHRLICH
 NOTARY PUBLIC, State of New York
 No. 31-4900212
 Qualified in New York County
 Commission Expires March 30, 1977

PAYMENTS BY PETER V. KEILEY - BY DATE

<u>Date</u>	<u>Amount</u>	<u>Paid to</u>
2/28/72	\$ 525.00	Criminal Court of the City of New York
8/15/72	100.00	Marshal Bruce Kemp
9/11/72	25.00	" " "
10/2/72	25.00	" " "
11/30/72	25.00	" " "
1/15/73	25.00	" " "
2/15/73	25.00	" " "
3/20/73	25.00	" " "
4/18/73	25.00	" " "
5/16/73	25.00	" " "
9/6/73	50.00	" " "
2/5/74	198.50	" " "
TOTAL	<u>\$1,073.50</u>	

EXHIBIT A

No. 208DIRECTIVE TO JUDGES AND CLERKSRE: MOTIONS PERTAINING TO PARKING VIOLATIONS BUREAU (PVB)

Orders to show cause concerning any judgment sought or obtained by the Parking Violations Bureau (PVB) shall not be signed. This Court does not possess the underlying records of the PVB, and therefore is not in a position to judge the truth or falsity of the averments made in the moving papers.

PVB procedure regulates its own motions, and counsel should be advised to make such motions returnable at the Parking Violations Bureau, 475 Park Avenue South, New York, N. Y. 10016. Such motions will be heard before a PVB hearing officer.

The law provides for an administrative review by an appeals board of the PVB consisting of three or more members. Judicial review of the final determination of the appeals board may be sought in the Supreme Court pursuant to Article 78 of the CPLR.

For more detailed data regarding the foregoing, you are referred to Article 2B of the Vehicle and Traffic Law, Secs. 235-244, ("Adjudication of Parking Infractions"), as added by Chapter 715 of the Laws of 1972.

If a motion is brought in this court by ordinary notice of motion, it should be denied without prejudice and with leave to renew before the PVB.

Do not be misled by the fact that the papers presented to you may recite that the PVB judgment in question was or will be entered in the Civil Court. Such entry is pro forma and only designed to allow levy and execution by City Marshals and for no other purpose. As such they are not judgments of this court.

EDWARD THOMPSON, J. S. C.
Administrative Judge

Dated: August 31, 1972

EXHIBIT B

PARKING VIOLATIONS BUREAU
OFFICE OF JUDGMENTS & EXECUTIONS
51 CHAMBERS STREET
NEW YORK, NEW YORK 10007

ADRIAN P. BURKE
CORPORATION COUNSEL
ATTORNEY FOR JUDGMENT-CREDITOR

STATE OF NEW YORK, COUNTY OF NEW YORK

SS. *

I, [REDACTED], CLERK OF THE CIVIL COURT OF THE CITY OF NEW YORK,
COUNTY OF NEW YORK, HEREBY CERTIFY THAT THE ENCLOSED ARE CORRECT TRANSCRIPTS FROM
THE DOCKET OF JUDGMENTS IN MY OFFICE.

IN TESTIMONY WHEREOF, I HAVE HEREUNTO SET MY NAME AND AFFIXED MY OFFICIAL SEAL

THIS

29th

DAY OF

NOVEMBER, 1974.

Adrian P. Burke

[REDACTED]
CLERK

ANY PREVIOUS JUDGMENT NOT SHOWN IN THE WITHIN VOLUME SHALL BE PRESUMED TO BE SATISFIED.
FOR ANY INFORMATION CONCERNING THE WITHIN JUDGMENTS, CONTACT PARKING VIOLATIONS BUREAU,
OFFICE OF JUDGMENTS & EXECUTIONS, 51 CHAMBERS STREET, NEW YORK, NY.

71 DEC 13 AM 11:37
71 DEC 13 AM 11:37

10/30/74

PARKING VIOLATIONS BUREAU JUDGMENT FILE

RUN-PAGE 3169

VOL K

PAGE 72

DATE
SATISFIEDDATE
SATISFIED

NAME	ADDRESS	AMT	NUM	DATE SATISFIED	NAME	ADDRESS	AMT	NUM	DATE SATISFIED
E, GARY, L	95 ACDEN ST	340	08		KEIGHN, ROBERT, R	20 62 32 ST	20	01	
E, HELEN, F	354 MOSHOLU PKY	275	07		KEIMM, KATHLEEN	659 PIERMONT AV	140	03	
E, IRENE, M	1554 SCENECIDY AV	35	01		KEIMM, STEPHEN, J	650 PIERMONT AVE	75	03	
E, JAMES, M	2465 TRATMAN AV	235	06		KEIL, ANDREW, F	25 HARVARD ST	45	02	
E, JAMES, M	2465 TRATMAN AV	50	01		KEIL, ANLENE	1772 COLBERTA LA	35	01	
E, JOHN	164 ANDREWS AV	40	01		KEIL, PETER	69 9 9 ST	90	03	
E, JOHN	1702 E 2 ST	100	02		KEIL, PETER, A	23 RIVER RD	25	02	
E, JOHN, J	3477 FT INDEPEND ST	40	01		KEIL, RONALD, A	749 12 ST	165	07	
E, JOHN, L	5425 VALLES AV	181	04		KEILMICH, PAUL	42-14 10TH ST	25	01	
E, JOSEPH, E, JR	47 16 45 ST	275	07		KEILSH, ALICE	100 1147 RD	55	03	
E, JOSEPH, F	262 THIN LA E	90	02		KEILER, LEONARD	15 20 202 ST	50	02	
E, KEVIN, M	2440 WEBB AV	40	02		KEILER, MITCHELL	100 11 67 RD	1235	31	
E, LEO, T	41 49 45 ST	1	02		KEILER, MITCHELL, M	600 W 240 ST	470	11	
E, MARGARET	159 49 CROSSWAY BV	9	02		KEILEY, CAMPBELL, J	27 HESTER LA	20	01	
E, MARGARET, A	8 WALTER TER	45	02		KEILEY, PAUL, A	341 HCH 100 ST	20	01	
E, MARGARET, R	1233 BELMONT AV	105	03		KEILEY, PETER, V	67-40 EXETER ST	1480	44	
E, MARGARET, R	1233 BELMONT AVE	90	02		KEILIN, EDGEE	60 RIVERSIDE ST	370	14	
E, MARGARET, R	159 49 CROSSWAY BV	40	01		KEILIN, SUSAN, D	50 FELICE CRES	370	09	
E, MARJORIE, T	2006 DECATUR AV	41	01		KEILING, JOHN, F	120 15 103 AV	20	01	
E, MARJORIE, T	3006 DECATUR AV	40	01		KEILING, PAMELA, A	210 COTWELL AV	25	01	
E, MAUREEN	11 WILBUR ST	50	01		KEILLER, ELIZABETH, R	218 20 52 RD	25	01	
E, MAUREEN	23 HILLSIDE AV	25	01		KEILLER, WALTER, S	1369 CLAY AV	25	01	
E, MAUREEN	30 DONGAN PL	40	01		KEILSON, JOEL, C	82-46 LEFFERTS BV	170	05	
E, MAUREEN, P	3 FLOWER RD	25	01		KEILSON, JOSEPH	25 54 MOTT AV	50	01	
E, MICHAEL, L	1547 E 13 ST	40	01		KEILSON, JOSEPH	25 54 MOTT AV	35	01	
E, OWEN	30 DONGAN PL	164	04		KEILSON, SIDNEY	430 OCEAN PKY	90	03	
E, PATRICIA, A	43 DRAKE RD	90	02		KEIMER, RONALD	164 ENDERDUNK AV	25	01	
E, RITA, M	94-39 239 ST	20	01		KEIMIG, ROBERT, J	38 11 205 ST	40	01	
E, ROBERT, J	235 DEVDE ST	40	01		KEIMOWITZ, SIDNEY	217 66 75 AV	20	01	
E, STEVEN, V	2215 34 ST	35	01		KEINATH, GUNTER	247 W 10 ST	50	01	
E, TERESA, M	7705 21 AV	445	12		KEINATH, WALTER, J	125 HOBSON AV	40	01	
E, THOMAS	16 GROVE ST	50	01		KEINOL, ERNEST	154-12 90 AV	275	03	
E, THOMAS	3636 GREYSTONE AV	275	07		KEINER, CHARLES, M	1591 METROPOLITAN	175	07	
					KEINGSTEIN, JEFF	65 48 PARSONS BL	50	01	

LISTING OF PETER V. KELLEY TICKETS AT ISSUE
NUMERICAL ORDER - LAST 4 NUMBERS OF SUMMONSES

<u>No.</u>	<u>Ticket Number</u>	<u>Date of Issue</u>	<u>No.</u>	<u>Ticket Number</u>	<u>Date of Issue</u>
1	217560081	12/08/71	46	228538402	11/02/72
2	123960141	10/22/70	47	174768543	08/10/71
3	228530212	08/23/72	48	178218740	07/12/71
4	267810325	06/14/72	49	205768776	09/24/71
5	215690565	12/09/71	50	163838921	09/20/71
6	268021250	05/23/72	51	111779010	08/03/70
7	194341383	02/09/72	52	192769010	01/04/72
8	311142016	02/08/73	53	120369642	09/18/70
9	248042034	12/21/72	54	219889891	01/14/72
10	184222194	06/01/71			
11	100052363	08/24/70			
12	182612426	07/06/71			
13	120972460	11/10/70			
14	193992492	02/22/72			
15	270682764	08/04/72			
16	142542973	03/09/71			
17	212323020	11/14/71			
18	269893175	07/18/72			
19	178853544	07/07/71			
20	167003745	10/08/71			
21	265953810	08/11/72			
22	179513902	12/01/71			
23	272554354	09/14/72			
24	207474746	10/14/71			
25	168514846	11/23/71			
26	226585612	02/14/72			
27	260215686	09/07/72			
28	120195762	08/17/70			
29	265745874	06/06/72			
30	118405395	11/18/70			
31	199776113	04/18/72			
32	129366145	02/11/71			
33	228526491	06/30/72			
34	307426711	11/21/72			
35	167046725	10/26/71			
36	241256853	04/03/72			
37	261826972	10/06/72			
38	244327145	05/02/72			
39	140107181	04/07/71			
40	168407584	11/10/71			
41	184257636	06/30/71			
42	265197984	05/22/72			
43	145888186	03/03/71			
44	228588263	08/01/72			

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PETER V. KEILEY,

Plaintiff,

-against-

ELBERT HINKSON, et al.,

Defendants.

AFFIDAVIT

74 Civ. 5075 (IBW)

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

ELLIOT R. PRESS, being duly sworn, deposes and says:

1. While the reply affidavits submitted were not authorized or directed by the Court, your deponent deems it appropriate to respond to the plaintiff's statement that he paid \$525.00 on February 28, 1972, for all summonses outstanding up to that date.

2. That statement is categorically untrue. Annexed hereto are copies of records obtained from the Criminal Court of the City of New York which identify the summonses for which payment was made. Each and every summons was issued prior to July 1, 1970, the date the P.V.B. assumed jurisdiction.

3. Hence, the P.V.B. could not have any record of these payments.

ELLIOT R. PRESS

Sworn to before me this

7 day of February, 1975

Notary Public for the State of New York
No. 111369
Commission Expires March 30, 1976

DELINQUENT SUMMONS STATEMENT

CRIMINAL COURT OF THE CITY OF NEW YORK

This is to notify you that YOUR FAILURE TO DISPOSE of the parking cases listed below within TWO WEEKS of the statement date will be certified to the Commissioner of Motor Vehicles.

Chapter 164 of the Laws of 1970 directs the Commissioner of Motor Vehicles to DENY THE RENEWAL OF REGISTRATION of a motor vehicle if at the time of application there is a certification from a court that the Registrant or his Representative failed to appear on the return date in response to THREE OR MORE summonses, issued within an eighteen month period, charging that such motor vehicle was parked, stopped or standing in violation of any provisions of the Vehicle and Traffic Law or of any Law, Ordinance, Rule or Regulation made by a local authority.

You may dispose of these cases by mailing a check or money order for the total or adjusted amount of the fine and made payable to the Criminal Court; or you or your representative may appear at 9:30 A.M. Monday to Friday in any court listed below.

YOU MUST RETURN THIS STATEMENT WITH YOUR PAYMENT IN THE ENCLOSED ENVELOPE OR PRESENT IT IF YOU APPEAR IN COURT.

PLAINT NO. CASE NO. DOCKET NO. SUMMONS NO. YEAR DATE ISSUED FINE

11 04 71 31 SP8933 0 NYL 5493309 5001739 68 09/30/68 15 00

44 4059028 04 02/72 NYL 5872739 5023036 68 10/19/68 25 00

KILLEN PETER V NYL 3198646 5271121 69 01/09/69 15 00

67-80 EXETER ST NYL 3258476 5275509 69 12/15/68 15 00

FOREST HILLS NY NYL 3545492 T423542 70 02/11/70 15 00

NYL 4523264 U095020 70 05/04/70 25 00

TOTAL \$ 110 00

CRC 1925

PART 5	NEW YORK	346 BROADWAY
PART 5	BRONX	1400 WILLIAMSBRIDGE RD.
PART 5	QUEENS	25-10 COURT SQUARE, L. I. CITY
PART 5	KINGS	127 PENNSYLVANIA AVE.
PART 5	RICHMOND	67 TARGEET STREET

NOTICE:

IF YOU HAVE APPEARED OR MADE PAYMENT ON ANY OF THE ABOVE CASES, STRIKE OUT THAT CASE AND REMIT ADJUSTED AMOUNT IF ANY.

SHOW ADJUSTED AMOUNT HERE

DOLLARS	CENTS
	00

DELINQUENT SUMMONS STATEMENT

CRIMIN'L COURT OF THE CITY OF NEW YORK
159

This is to notify you that YOUR FAILURE TO DISPOSE of the parking cases listed below within TWO WEEKS of the statement date will be certified to the Commissioner of Motor Vehicles.

Chapter 164 of the Laws of 1970 directs the Commissioner of Motor Vehicles to DENY THE RENEWAL OF REGISTRATION of a motor vehicle if, at the time of application there is a certification from a court that the Registrant or his Representative failed to appear on the return date in response to THREE OR MORE summonses, issued within an eighteen month period, charging that such motor vehicle was parked, stopped or standing in violation of any provisions of the Vehicle and Traffic Law, or of any Law, Ordinance, Rule or Regulation made by a local authority.

You may dispose of these cases by mailing a check or money order for the total or adjusted amount of the fine and made payable to the Criminal Court; or you or your representative may appear at 9:30 A.M. Monday to Friday in any court listed below.

YOU MUST RETURN THIS STATEMENT WITH YOUR PAYMENT IN THE ENCLOSED ENVELOPE OR PRESENT IT IF YOU APPEAR IN COURT.

STATEMENT NO.	CASE NO.	DOCKET NO.	SUMMONS NO.	DATE ISSUED	FINE
11/04/71 NY	SP8933 C	604 4924929	0290527	68 07/25/68	15 00
*4059628#02 02/72		NY1 5641896	1000091	68 10/17/68	25 00
KEILEY PETER V		NY1 4995291	1679368	69 07/02/69	15 00
67-80 EXETER ST		NY1 4581401	1046966	69 05/20/69	25 00
FOREST HILLS NY		NY1 5931221	1342538	69 10/08/69	15 00
		EX5 6424117	1477842	69 11/20/69	10 00

TOTAL \$ 105 00

PART 5	NEW YORK	346 BROADWAY
PART 5	BRONX	1400 WILLIAMSBRIDGE RD.
PART 5	QUEENS	25-10 COURT SQUARE, L. I. CITY
PART 5	KINGS	127 PENNSYLVANIA AVE.
PART 5	RICHMOND	67 TARGEET STREET

NOTICE:

IF YOU HAVE APPEARED OR MADE PAYMENT ON ANY OF THE ABOVE CASES, STRIKE OUT THAT CASE AND REMIT ADJUSTED AMOUNT IF ANY.

SHOW ADJUSTED AMOUNT HERE

DOLLARS	CENTS
	00

DELINQUENT SUMMONS STATEMENT

CRIMINAL COURT OF THE CITY OF NEW YORK

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Chapter 164 of the Laws of 1970 directs the Commissioner of Motor Vehicles to DENY THE RENEWAL OF REGISTRATION of a motor vehicle If at the time of application there is a certification from a court that the Registrant or his Representative failed to appear on the return date in response to THREE OR MORE summonses, issued within an eighteen month period, charging that such motor vehicle was parked, stopped or standing in violation of any provisions of the Vehicle and Traffic Law or of any Law, Ordinance, Rule or Regulation made by a local authority.

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YOU MUST RETURN THIS STATEMENT WITH YOUR PAYMENT IN THE ENCLOSED ENVELOPE OR PRESENT IT IF YOU APPEAR IN COURT.

STATEMENT DATE	ST	CAR LICENSE	DOCKET NO.	SUMMONS NO.	YR	DATE ISSUED	FINE
11/04/71	NY	SV8933	0	CL4 6481717	F493821	69	11/25/69 10 00
*4059628	CB	02/72		CL4 4806253	K566561	69	06/12/69 15 00
KEILEY PETER V				NY1 6024106	L657571	69	10/17/69 25 00
67-20	NY	17111P	ST	NY1 6722464	L891165	69	12/16/69 25 00
FOREST HILLS NY				NY1 3928845	K314277	70	03/12/70 15 00
				CL4 2667191	K160894	68	03/07/68 15 00

TOTAL \$ 105 00

PART 5	NEW YORK	346 BROADWAY
PART 5	BRONX	1400 WILLIAMSBRIDGE RD.
PART 5	QUEZENS	25-10 COURT SQUARE, L. I. CITY
PART 5	KINGS	127 PENNSYLVANIA AVE.
PART 5	RICHMOND	67 TARGEET STREET

NOTICE:

IF YOU HAVE APPEARED OR MADE PAYMENT ON ANY OF THE ABOVE CASES, STRIKE OUT THAT CASE AND REMIT ADJUSTED AMOUNT IF ANY.

SHOW ADJUSTED AMOUNT HERE

DOLLARS	CENTS
	00

DELINQUENT SUMMONS STATEMENT

CRIMINAL COURT OF THE CITY OF NEW YORK

This is to notify you that YOUR FAILURE TO DISPOSE of the parking cases listed below within TWO WEEKS of the statement date will be certified to the Commissioner of Motor Vehicles.

Chapter 164 of the Laws of 1970 directs the Commissioner of Motor Vehicles to DENY THE RENEWAL OF REGISTRATION of a motor vehicle if at the time of application there is a certification from a court that the Registrant or his Representative failed to appear on the return date in response to THREE OR MORE summonses, issued within an eighteen month period, charging that such motor vehicle was parked, stopped or standing in violation of any provisions of the Vehicle and Traffic Law or of any Law, Ordinance, Rule or Regulation made by a local authority.

You may dispose of these cases by mailing a check or money order for the total or adjusted amount of the fine and made payable to the Criminal Court; or you or your representative may appear at 9:30 A.M. Monday to Friday in any court listed below.

YOU MUST RETURN THIS STATEMENT WITH YOUR PAYMENT IN THE ENCLOSED ENVELOPE OR PRESENT IT IF YOU APPEAR IN COURT.

STATEMENT DATE	CASE NO.	CASE NO.	DOCKET NO.	SUMMONS NO.	CITY	DATE ISSUED	FINE
11-04/71 NY	SM8933	0	CL4 3828857	2229110	68	03/22/68	15 00
4059628*01 02/72			NY1 4100808	8402315	68	04/23/68	25 00
REILEY, PETER M			NY1 4034298	8437940	68	04/16/68	25 00
67-80 EXETER ST			NY1 4611626	8458772	68	06/19/68	25 00
FOREST HILLS NY			NY1 4444846	8940258	68	05/29/68	25 00
			CL4 4846780	8950807	68	07/16/68	15 00

TOTAL \$ 130 00

COURT	COUNTY	ADDRESS
PART 5	NEW YORK	346 BROADWAY
PART 5	BRONX	1400 WILLIAMSBRIDGE RD.
PART 5	QUEENS	25-10 COURT SQUARE, L. I. CITY
PART 5	KINGS	127 PENNSYLVANIA AVE.
PART 5	RICHMOND	67 TARGEE STREET

NOTICE:

IF YOU HAVE APPEARED OR MADE PAYMENT ON ANY OF THE ABOVE CASES, STRIKE OUT THAT CASE AND REMIT ADJUSTED AMOUNT IF ANY.

SHOW ADJUSTED AMOUNT HERE

DOLLARS	CENTS
	00

DELINQUENT SUMMONS STATEMENT

CRIMINAL COURT OF THE CITY OF NEW YORK

This is to notify you that YOUR FAILURE TO DISPOSE of the parking cases listed below within TWO WEEKS of the statement date will be certified to the Commissioner of Motor Vehicles.

Chapter 164 of the Laws of 1970 directs the Commissioner of Motor Vehicles to DENY THE RENEWAL OF REGISTRATION of a motor vehicle if at the time of application there is a certification from a court that the Registrant or his Representative failed to appear on the return date in response to THREE OR MORE summonses, issued within an eighteen month period, charging that such motor vehicle was parked, stopped or standing in violation of any provisions of the Vehicle and Traffic Law or of any Law, Ordinance, Rule or Regulation made by a local authority.

You may dispose of these cases by mailing a check or money order for the total or adjusted amount of the fine and made payable to the Criminal Court; or you or your representative may appear at 9:30 A.M. Monday to Friday in any court listed below.

YOU MUST RETURN THIS STATEMENT WITH YOUR PAYMENT IN THE ENCLOSED ENVELOPE OR PRESENT IT IF YOU APPEAR IN COURT.

STATEMENT DATE	CASE NO.	DOCKET NO.	SUMMONS NO.	CITY	DATE ISSUED	FINE
11/04/71 NY	SM8932 0	NY1 4785887	U199772	70	05/26/70	25 00
4059628*05 02/72		NY1 4873030	U271782	70	06/03/70	25 00
MOILEY PETER M		NY1 5098268	U393605	70	06/24/70	25 00

COURT	COUNTY	ADDRESS
PART 5	NEW YORK	346 BROADWAY
PART 5	BRONX	1400 WILLIAMSBRIDGE RD.
PART 5	QUEENS	25-10 COURT SQUARE, L. I. CITY
PART 5	KINGS	127 PENNSYLVANIA AVE.
PART 5	RICHMOND	67 TARGEE STREET

005 00 005 TOTAL \$ 75 00

GRAND TOTAL \$ 525 00

NOTICE:

IF YOU HAVE APPEARED OR MADE PAYMENT ON ANY OF THE ABOVE CASES, STRIKE OUT THAT CASE AND REMIT ADJUSTED AMOUNT IF ANY.

SHOW ADJUSTED AMOUNT HERE

DOLLARS	CENTS
	00

R+C
Green

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PETER V. KRILEY,

Plaintiff,

-against-

74 Civ. 5075

ELBERT HINKSON, etc., et al.,

Defendants.

APPEARANCES:

CARL E. PERSON, ESQ.
WALTER C. REID, ESQ.
Attorneys for Plaintiff
132 Nassau Street
New York, New York 10038

W. HERBERT RICHARD, ESQ.
Corporation Counsel
Attorney for Defendants

EDWARD J. MALLON, ESQ.
ELLIOT R. PRESS, ESQ.
PATRICK J. ROONEY, ESQ.
Of Counsel

WYATT, District Judge.

This is a motion by plaintiff to convene a three-judge court pursuant to 28 U.S.C. § 2281 and following, and a motion by defendants to dismiss the complaint for lack of jurisdiction and for failure to state a claim upon which relief may be granted. Fed. R. Civ. P. 12(b)(1), (6). Since both sides have submitted affidavits, the motion of defendants to dismiss will be treated as one for summary judgment, Fed. R. Civ. P. 12(b), 36, and is granted for the reasons which follow. The

motion of plaintiff for the convening of a three-judge court is denied.

Plaintiff commenced this action on November 19, 1974. On November 25, 1974 he served by mail an amended complaint and a notice of motion for the convening of a three-judge court. Defendants' time to answer has been extended by stipulation until the determination of the present motions. The defendants served on plaintiff their motion to dismiss the complaint on January 24, 1975. Oral argument was heard in open Court on January 31, 1975, the return date of both motions.

1. The Action

Plaintiff is a resident of Queens County, New York, and bases his action on 28 U.S.C. § 1383. He claims in essence (see section 3 below) that defendants have deprived him of constitutional rights by enforcement of an allegedly invalid New York statutory scheme for the collection and enforcement of parking violation judgments. Default judgments aggregating \$1980 are presently outstanding against plaintiff. The three defendants are Hinkson, Director of the Parking Violations Bureau of the City of New York, Beame, Mayor of the City of New York, and Goldan, Comptroller of the City of New York. Jurisdiction is predicated on 28 U.S.C. § 1343(3). Venue lies in the Southern District because all defendants are resident herein. 28 U.S.C. § 1391(b)

2. Background

It is necessary to set forth at length the procedure

established by the New York Legislature for the administrative determination of parking violations before its alleged constitutional defects may be understood.

Prior to July 1, 1970, the Criminal Court of the City of New York had statutory jurisdiction to adjudicate traffic infractions. New York Vehicle and Traffic Law §§ 1800 and following (McKinney 1970) That burdened court processed in 1969 approximately 3 million summonses. Hinkson affidavit, p.2

Recognizing this burden, the New York Legislature amended (effective July 1, 1970) section 155 of the Vehicle and Traffic Law to authorize the creation of an 'administrative bureau in cities having a population of one million or more persons to hear and determine "traffic infractions", which were declared no longer to constitute crimes. Laws of 1969, Ch. 1075, approved May 26, 1969 That same act amended (also effective July 1, 1970) Chapter 40 of the Administrative Code of the City of New York (N.Y.C.Admin. Code) to create a Parking Violations Bureau (PVB) in the Department of Traffic. In 1972, the New York Legislature further amended (effective July 30, 1972) the Vehicle and Traffic Law by adding a new Article 2-B (Veh. & Traff. Law §§ 235-44) which sets forth the procedure to be followed by administrative bureaus in adjudicating "traffic infractions constituting parking, standing or stopping violations." Laws of 1972, Ch. 715, approved May 30, 1972 The procedures substantially conform to those which the Legislature had in 1970 established for the PVB.

A person who commits a parking violation (a violator) is served (by affixation to his vehicle) with a summons (a "notice of violation"), which states that he must appear within seven days before the FVB to schedule a hearing or plead by mailing the "plea form" to the FVB within 7 days of the date of issuance of the summons. If the violator fails to take either step, the FVB sends to him a notice, not required by statute, three weeks from the date of issuance of the summons. Hinkson Affidavit, p.3 The notice advises him of the violation and of the consequences which may follow from default, which are the entry of a default judgment and the assessment of penalties (additional to the fine for the parking violation itself). By statute, the total monetary penalty for each violation may not exceed \$50. N.Y.C. Admin. Code § 24-236(b) If the violator continues not to appear or plead, a "final notice of impending default judgment" is sent to the violator three weeks from the date of sending of the prior notice. This second notice is required by statute. N.Y.C. Admin. Code § 24-236(b); Hinkson Affidavit, p.3 The second notice contains essentially the same statements as the prior notice and advises the violator that he may avoid default either by payment or by pleading in person within 30 days of the date of the notice. The form of notice states that the failure to plead or appear timely results in a \$5 to \$10 penalty additional to the fine for the violation itself. Neither may a default judgment be rendered nor may a notice of a default judgment be sent more than two years after

the expiration of the time prescribed for entering a plea or making an appearance." N.Y.C. Admin. Code § 883a-7.0(b)

The "rendering" of a default judgment is an act which is different from the "entry" of a default judgment. The former apparently refers to the recordation by the PVS of the violator's default after his failure to respond to the second notice of default. See defendants' Supplemental Affidavit (filed February 5, 1975), p.2, and the Hinkson affidavit, p.6, para 12 and p.7, para 23; see also 5 Weinstein Korn & Miller, paras 5016.01-.04. The latter refers to the entering of the judgment by the Clerk of the Court in the civil docket of the Court. See Fed. R. Civ. P. 79(a) for the federal practice.

If a violator wishes to plead not guilty or guilty with an explanation, he receives a hearing conducted by a hearing examiner of the PVS. See generally, N.Y.C. Admin. Code § 883a-6.0. The examiner is not bound by the rules of evidence except for the rules for privileged communications. N.Y.C. Admin. Code § 883a-6.0(3). In his discretion or at the request of the person charged, the examiner may compel by subpoena the attendance of witnesses. N.Y.C. Admin. Code § 883a-6.0(4). The statute provides for appeal to the PVS Appeal Board and for judicial review of an order of that body by the New York Supreme Court in an Article 78 proceeding. Civil Practice Law and Rules (CPLR) § 7801 and following. The standard for review of the evidence on which the examiner based his decision is a preponderance of the evidence, N.Y.C. Admin. Code § 883a-6.0(2), and not

merely substantial evidence.

If a violator defaults, the PVB may enter and enforce judgments "without court proceedings in the same manner as the enforcement of money judgments in civil actions". N.Y.C. Admin. Code § 263-3.3(e) The Vehicle and Traffic Law (§ 237(5)) adds: "... in any court of competent jurisdiction or in any other place provided for the entry of civil judgments within the state of New York". The procedure which is followed by the PVB for the enforcement of default judgments must be taken for present purposes from the statute, from the affidavit of defendant Hinkson, from the confusing explanations of counsel at the hearing of these motions, and from supplementary affidavits submitted by both parties after that hearing.

After a violator has defaulted, the PVB makes a record of the default. It does so by storing, in a computer, information as to each default: the name of the violator, his address, the license number of the offending vehicle, the summons number, its date of issuance, the total amount of the fine and penalty, and a judgment and docket number. At the end of an unspecified period, the computer is caused to print out a list of default judgments on a document called a "Judgment Register". See Hinkson affidavit, p.6 and Exhibit F annexed to defendants' memorandum of law. The list is compiled in such a manner that the judgments are listed after the name of each violator; violators are listed alphabetically by last name.

When the defaults have been recorded and printed out

by the PVB computer, as described above, the printouts are filed with the Clerk of the Civil Court of the City of New York (the Civil Court) pursuant to N.Y.C. Admin. Code § 23-1a-3.0(e). Thus, a computer printout dated August 13, 1971 which shows default judgments against plaintiff and others was filed with the Clerk of the Civil Court on November 1, 1971. It constitutes the judgment roll and judgment. These printouts are apparently stored in books in an office of the Clerk of the Civil Court. See affidavit of Eugene St. Louis (annexed to affidavit by plaintiff filed January 30, 1975) pp. 3-5

The computer used by the PVB is programmed in such a way that each periodic printout generated by the computer and filed with the Clerk of the Civil Court shows every default judgment listed on the prior printout if that default judgment has not been paid in the period prior to the generation of the subsequent printout. If a judgment listed on the prior printout has been paid before the generation of the subsequent printout, that judgment is erased from the computer and it does not appear on the subsequent printout. Exhibit G annexed to defendants' memorandum of law shows such a computer printout dated November 22, 1972 and apparently filed with the Clerk of the Civil Court on March 14, 1973. Winkson affidavit, p.6 It incorporates the unpaid default judgments of plaintiff shown on the Judgment Register filed on November 1, 1971. Apparently the PVB now no longer files printouts such as Exhibit F, but periodically files only a printout such as Exhibit G. See St. Louis affidavit, pp. 3-4

The FVB also apparently maintains a "Scofflaw Certification", which is also a document periodically printed out by computer and which lists all the default judgments of violators. This document is used by the FVB to certify to the Commissioner of the Department of Motor Vehicles those violators who have failed to comply with the rules and regulations of any administrative body with respect to three or more summonses. Veh. & Traff. Law § 514.4(a) This document it is represented (affidavit of Elliot Press, filed February 5, 1975, p.1), contains under the name of each violator all default judgments, paid and unpaid, of that violator and shows on its face the amount of each judgment and the amount, if any, paid by the violator on each default judgment. This "Scofflaw Certification" is apparently normally filed with the Clerk of the Civil Court. See Exhibit 1 annexed to defendants' supplemental affidavit which was filed on December 19, 1973 and which shows these judgments as of December 5, 1973. However, Exhibit 1 does not contain all judgments paid and unpaid since the commencement of the operation of the FVB on July 1, 1970. The first five and the seventh judgments on Exhibit F do not appear on Exhibit 1, presumably because they were paid prior to the date (December 5, 1973) of the printout. As to two other judgments which do appear on both Exhibits 1 and F, the amount of partial payment is shown. Presumably at some point the FVB changed its form of "Scofflaw Certification" from showing only outstanding and unpaid judgments to showing all judgments and also the

amount paid as to each judgment.

In addition, the FVB maintains a "Summons Status" computer printout (Exhibit 2 annexed to the P. affidavit) which shows only those judgments outstanding against a violator. There is no indication that this document is filed with the Clerk of the Civil Court. It seems however to be an updated (December 2, 1974) version of the "Schofflaw Certification" filed with the Clerk of the Civil Court.

3. Plaintiff's Claims

The amended complaint contains a demand for a jury trial, sets forth class action allegations, and is subdivided into four counts.

The first count avers that the defendants and their agents have pursued "a governmental policy, practice, custom and usage which unlawfully deprived plaintiff of [his] constitutional rights, in violation of § 1983 of the Civil Rights Act." The unlawful conduct is said to consist first in defendants' enforcement against plaintiff of default judgments entered on the dockets of the Civil Court of the City of New York beyond the statutory period for rendering and entering such judgments. Secondly, the default judgments are said to be "non-existent and/or non-enforceable" irrespective of whether rendered within the statutory period.

The second count avers that defendants fraudulently induced plaintiff to pay "approximately \$1000 in non-existent and/or unenforceable 'judgements'". This count is said to be

pendent to the other causes of action.

The third and fourth counts allege, as does the first, that defendants deprived plaintiff of his constitutional rights in violation of 42 U.S.C. § 1983. The unlawful conduct averred in the third count is the assessment by the FVB of one or more penalties, additional to the amount assessed as a fine for the violation itself, for failure to appear or plead or to respond to a default notice within the times designated by statute. The allegation of the fourth count is that administrative decisions are "given the effect of judicial judgments . . . without the safeguards provided by the courts of New York, State and New York City."

Plaintiff seeks declaratory and injunctive relief, an order permitting him to represent the class of persons who, between November 20, 1966 and November 19, 1974, "paid one or more New York City parking tickets more than two years after the expiration of the time prescribed for entering a plea or making an appearance", the convening of a three-judge court, and a refund of "all amounts collected (from November 20, 1966 to November 19, 1974) by defendants." Plaintiff did not move for class action determination as required by Rule 11A of the Civil Rules of the Southern District.

4. Failure to State a Claim Against Defendants Beame and Goldin

Plaintiff claims that defendants Beame and Goldin are properly defendants in this action. The former, as Mayor of the City of New York, exercises "all the powers vested in

the City, except as otherwise provided by law." Charter of the City of New York, § 8. The latter, as Comptroller of the City of New York, has the power "to settle and adjust all claims in favor of or against the City." Charter, § 93.1 Plaintiff seems to claim that these sections of the Charter and the interest of defendants Beame and Goldin in maximizing revenue show that they are responsible for the enforcement by the FVB of the default judgments against violators. The only evidence presented by plaintiff consists of copies of newspaper articles describing the large amounts of money owed to and collected by the FVB and the City from violators.

The law is clear: where money damages are sought under § 1963, plaintiff has the burden to show that the defendant was personally responsible for the unlawful conduct. Johnson v. Glick, 481 F.2d 1028, 1034 (2d Cir. 1973); Richardson v. Snow, 340 F.Supp. 1261, 1262 (D.Md. 1972). The same authorities make it clear that liability under § 1963 may not be asserted against a named defendant simply because that defendant is the employer or supervisor of an offending official. Plaintiff's attorney himself states that "Messrs. Beame and Goldin had no visible responsibility or involvement in the rendering or entering of all or most of the judgments against plaintiff". Affidavit in opposition of Carl S. Person, annexed to affidavit by plaintiff (filed January 30, 1973), pp. 9-10. Its procedures were established by act of the New York Legislature; its operation is supervised by its director, defendant Hinkson. Veh. & Traff. Law §§ 236.2, 237.3. Plaintiff does not clarify the scope of the authority, if any, of the mayor or comptroller

over the FVB or the Department of Transportation.

The complaint therefore fails to state a claim against defendants Deane and Goldin.

3. Validity of FVB Judgments

a. The rendering of judgments after lapse of two-year statutory period

This aspect of the first count fails to state a claim because it is factually inaccurate. The Court has inspected the computer printouts of the FVB dated August 13, 1971, November 22, 1972, and December 5, 1973, all filed by the Clerk of the Civil Court. See section 2 above. It is not disputed that these records as a whole show all default judgments, whether or not paid, rendered against plaintiff since the inception of the operations of the FVB on July 1, 1970 up to the date of the filing of the complaint.

These records show that every default judgment rendered against plaintiff was done so within the prescribed period. This can be ascertained from the face of the computer printouts by comparing the date of issuance of the summons with the date of filing of the default judgment. This comparison is generous to plaintiff since the statutory period runs from the date of the required appearance or plea, N.Y.C. Admin. Code § 883a-7.0(b), which date is seven days after the issuance of the summons. Furthermore, the date of filing of every default judgment is within the prescribed period; a fortiori, the date of rendering by the FVB is within the prescribed period.

Plaintiff also claims that the entry of a default judgment may not be done more than one year after the default. CPLR § 3215(c) See plaintiff's memorandum of law in opposition, pp. 5-7. This argument incorrectly assumes that the CPLR governs the procedures of the FVB; the Vehicle and Traffic Law (§ 241.2) sets the relevant period. See CPLR § 101

b. FVB judgments are "non-existent"

This second aspect of the first count relates to plaintiff's claim that he has been deprived of due process of law because he was not able to locate the place of filing of judgments against him and therefore he is denied access to public records (the judgments) which serve as the basis for the issuance of executions against his personal property. By extensive affidavits, plaintiff has detailed his efforts to find the actual judgments outstanding against him. He has clearly demonstrated the bureaucratic confusion in the Civil Court and the FVB, but the copies of FVB judgments submitted to the Court by defendants' counsel all indicate that they had been filed with the Clerk of the Civil Court. The affidavit of Thomas Dean, a clerk of the Civil Court, states that an annex of the Civil Court has been established at 51 Chambers Street in New York City and is clearly marked. The affidavit of Eugene St. Louis, an employee of counsel for the plaintiff, describes this office as a place of great chaos, but the deponent was able to secure access to books of past judgment registers and of current print-outs. Thus, there is no question that a violator may ascertain

the current status of summons which have been issued against him, and has access to the record of all judgments entered against him.

- c. Default judgments of Administrative Agency not valid because not judgments of a New York Court

In open Court and in the memorandum of law in opposition to defendants' motion to dismiss, p.4 and following, plaintiff has argued that the default judgments are not enforceable because the PVB, an administrative agency, cannot create a "judgment" nor can it "enter" a judgment within the meaning of the CPLR. See §§ 5011 and 5016. The argument implies that the PVB cannot create valid default judgments by recording the defaults of violators with the Clerk of the Civil Court, but must apply to a judge of the Civil Court for the entry of a default judgment. Plaintiff argues that the authorization given to the PVB "to enter judgments", N.Y.C. Admin. Code § 883a-3.c(e), means that the judgments so entered must in form and content conform to the requirements of the CPLR.

In fact the method used by the PVB does substantially conform to the directives of the CPLR, although records are not transcribed by hand but by computer. The computer printout which serves as the judgment does "recite the default upon which it is based", CPLR § 5011, by references to the number of the summons, the date of its issuance, etc. as set forth in section 3 above. The computer printout is filed by the Clerk of the Civil Court. CPLR § 5016. It provides a record of the parties ,

the nature of the dispute, and the amount of the violator's liability, and thus serves the purpose of a judgment roll. See 5 Weinstein Korn & Miller, para 5011.4 The New York Legislature clearly authorized the present PVB procedure: "Judgments sustaining or dismissing charges shall be entered on a judgment roll maintained by the bureau together with records showing payment and non-payment of penalties." N.Y.C. Admin. Code § 883a-7.0(a) This latter governs the procedures of the PVB rather than the CPLR. CPLR § 101 The assertion that a discrepancy between the two statutes means that Article 2-b of the Vehicle and Traffic Law is unconstitutional is not ground for a due process challenge to the latter.

Plaintiff also argues that the PVB does not comply with the requirement of the CPLR that the applicant for a default judgment file a proof of service of the summons or complaint before the Clerk enters the default judgment. CPLR § 3215(e) It is open to question whether the PVB is an "applicant" within the meaning of that section of the CPLR, given the power of the PVB to enter judgments itself. N.Y.C. Admin. Code §§ 883a-3.0(e) and 883a-7.0(a) In any event, it is clear from the record that plaintiff had notice and knowledge that he was a violator and that he was in default. See complaint, p. 12, para 23 It is important to note that plaintiff neither in the first or the fourth count avers that the PVB lacked personal jurisdiction over him because of the inadequacy of service of process. Compare Velazquez v. Thompson, 451 F.2d 202 (2d Cir. 1971)

Plaintiff has also raised an issue regarding the constitutional sufficiency of the procedures of the PVB for the enforcement of its default judgments. Plaintiff rehearses a convoluted set of facts which purport to show, in substance, that the PVB procedures may result in the issuance of an execution from the Civil Court and levy by a marshal, even though the defaulting violator has paid the amount of the judgment. See supplemental affidavit by plaintiff and reply affidavit of plaintiff's counsel. (It is difficult to relate this averment to the complaint. The first count alleges that the PVB judgments are "non-existent" as a matter of fact and are "non-enforceable" as a matter of law because they are not "judgments". Plaintiff's argument by way of his affidavits seems to be that the manner of enforcement of default judgments by the PVB is constitutionally defective.)

Plaintiff first argues that a payment of \$525 made by him on February 28, 1972 in satisfaction of 27 judgments should have been credited by the PVB to amounts which it subsequently sought to collect from him. Reply affidavit of plaintiff's counsel, p.2; supplemental affidavit by plaintiff, p.1; affidavit of defendants' counsel. However, this payment was of judgments entered by the Criminal Court of the City of New York and related to summons issued prior to July 30, 1970, the date that the PVB commenced operation.

Plaintiff next argues that the PVB has attempted to collect twice on its own judgments. Sometime in July or August

1972 a marshal (Bruce Kemp) of the City of New York sent an undated form of notice to plaintiff advising him that the Civil Court had issued an execution against his personal property because plaintiff owed \$470 to the FVB, the judgment creditor named on the form. Affidavit by plaintiff, Exhibit A. [The 11 money judgments aggregating \$470 are listed in Exhibit C of the supplemental affidavit by plaintiff, p. 3, which is a printout which plaintiff apparently obtained from the marshal.]

Between August 15, 1972 and February 5, 1974, plaintiff paid the \$470; the marshal apparently did not levy on plaintiff's personal property. Supplemental Affidavit by plaintiff, pp. 2-3. In January 1973, the state Department of Motor Vehicles informed plaintiff that his vehicle registration would not be renewed because plaintiff had more than three unpaid judgments outstanding against him. Supplemental affidavit by plaintiff, p. 3. Plaintiff thereupon requested and received from the FVB office in Brooklyn (at 44 Court Street) a computer printout dated December 20, 1972 (the December 20, 1972 list), which showed that outstanding against plaintiff were 48 default judgments of an aggregate amount of \$2030. Supplemental affidavit by plaintiff, p. 3 and Exhibit D. Plaintiff avers that 8 of the 11 money judgments which were the basis of the marshal's pre-levy notice were also listed on the December 20, 1972 list. Thus, plaintiff argues that in order to obtain renewal of his vehicle registration he was required to pay those 8 money judgments twice, once to the marshal and once as part of the amount to be paid in satisfaction of the \$2030.

The record does not show, however, that plaintiff had in fact paid these 8 judgments prior to the time in January 1973 when he received the December 20, 1972 list. The receipts given by the marshal to plaintiff show that prior to January 1973 plaintiff had paid \$175. Of the 11 judgments being enforced by the marshal, the 3 which do not appear on the December 20, 1972 list (presumably because they were paid) aggregate \$110. It is possible that the difference of \$65 between \$175 and \$110 represents a payment by plaintiff not recorded on the December 20, 1972 list. But this discrepancy does not give rise to a constitutional claim. Plaintiff did not pay any part of the \$2030 owed on default judgments not in dispute, and therefore the apparent non-renewal of his vehicle registration was proper because there were some outstanding and unpaid default judgments in the \$2030 amount, even if it be assumed that plaintiff had paid one or more judgments included in that \$2030 sum.

By notice dated September 9, 1974, the American Creditors Bureau, a collection agency, informed plaintiff that the PVB had obtained judgments against plaintiff. Affidavit of plaintiff, Exhibit A. Plaintiff implies that he did not know to what judgments the collection agency was referring: "I . . . inquired as to the alleged judgments". Affidavit of plaintiff, p. 2. In response to his inquiry, plaintiff was apparently sent a copy (supplemental affidavit of plaintiff, Exhibit C) of a computer printout similar to the "Summons Status" printouts maintained by the PVB (see section 2 above). The printout which plaintiff

received from the collection agent contains the same judgments as the "Summons Status" dated December 9, 1974. The printout listed the judgments against plaintiff, showed that their sum was \$1930, and bore a handwritten note of the collection agent to plaintiff advising the latter to contact him immediately. Plaintiff apparently was told orally where the computer printout had been docketed. (His inability to find the location of the docketed judgment printout was treated in section 5^b above.) Of the eleven judgments which the return filed by the marshal (supplemental affidavit of plaintiff, Exhibit 8) shows that plaintiff had fully paid, one appears on the printout dated December 9, 1974 which was furnished to plaintiff by the collection agent. It relates to summons number 120195762 issued on November 10, 1970. The marshal's filed return shows that this judgment was fully paid; the printout received from the collection agent by plaintiff shows that this same summons was only partially paid (\$15 out of 340).

It is plaintiff's contention that the above facts show that the FVB's procedures can result in the deprivation of a defaulting violator's property without due process of law. After the computer generates a printout showing unpaid judgments, a violator^{or} may pay the amount due before the FVB or a collection agency demands payment. The printout which serves as the judgment will not reflect payment until the next printout is generated one month later. See section 2 above. Plaintiff will have a receipt from the marshal or from the collection agency,

but the docket - the latest computer printout filed by the Clerk of the Civil Court - will not reflect this payment. By contrast, a debtor on a judgment entered in a New York court has a right to the execution and filing by the judgment creditor of a satisfaction piece within a period of 20 days if the judgment is fully satisfied. CPLR §§ 5020 and 5021. This Court is not convinced that the difference between the filing of a satisfaction piece within twenty days of the date of satisfaction of the judgments by the judgment debtor and the monthly filing by the PVS of a computer printout on which paid judgments have been deleted is a difference of constitutional significance. Furthermore it does not appear from the evidence that plaintiff was harmed by the procedures of the PVS. Plaintiff has not paid any default judgment as to which he claims that he did not commit a parking violation or did not default. As a defaulter, plaintiff has been accorded^{due} process by the administrative scheme embodied in the Vehicle and Traffic Law and the N.Y.C. Admin. Code. The PVS adequately ensures against the double collection of judgments; there is no showing that^a defendant has collected twice on the same judgment.

The conclusion of the Court is that the statutory scheme and its implementation by the PVS accord plaintiff the due process required by the Fourteenth Amendment, having in mind a balancing of the state and private interests. Cafeteria & Restaurant Workers Union v. McElroy, 367 U.S. 866, 895 (1961)

Even if it were found that plaintiff had shown some evidence of a deprivation amounting to a denial of due process,

the multiplicity of technical questions arising as to the requirements of New York law for the form, content and timing of the entry of judgments by state courts make this case uniquely appropriate for abstention by a federal district court. See Blouin v. Dembits, 489 F.2d 488 (2d Cir. 1973)

6. Imposition of Penalties on
Defaulting Violators
in

Plaintiff avers/his third count that the assessment of penalties against a defaulting violator constitutes a denial of his right to equal protection, his right not to be deprived of his property with due process of law, and his right not to have excessive fines levied against him.

Plaintiff's equal protection claim is frivolous. He has admittedly defaulted and cannot claim a right to be treated as if he had appeared and been found after a hearing to have committed a parking violation. Cases cited by plaintiff (by way of copies of law review articles) deal with state laws which result in the imposition of a greater fine on those who are convicted after trial than on those who plead guilty. Plaintiff did neither.

It is possible under the applicable law that a penalty for a default may in a given case be greater in amount than the fine provided for the violation itself. It does not appear how the FVR calculates the amount of the penalties. In his memorandum in support of motion for convening of three-judge court (p.11) plaintiff states that the amount of the penalty depends on the length of delay in payment of the fine by a

defaulting violator. Apparently, a penalty of \$5 is assessed upon mailing of the first notice of default and a penalty of \$15 is assessed upon the mailing of the second notice. See 7 Col. J. of Law & Soc. Prob. 445 (1971) [copy annexed to plaintiff's affidavit in support of motion for convening of three-judge court]

The policies of the PVA for the assessment of penalties on defaulting violators, adopted pursuant to the Vehicle and Traffic Law, are subject to a limited scrutiny when challenged as violating the Equal Protection Clause. The evaluation by this Court is to ensure that there is a "rational relationship to a [permissible] state objective". Village of Belle Terre v. Bora, 416 U.S. 1, 8 (1974) quoting Heed v. Reed, 404 U.S. 71, 76 (1971); McGowan v. Maryland, 366 U.S. 420, 425-26 (1961). Here the penalty which may be assessed, when added to the underlying fine, cannot exceed \$50. N.Y.C. Admin. Code § 203a-3.0(b). The state has a valid objective to encourage violators to make timely appearances and payments. The large number of defaulting violators creates an administrative burden which causes an injury to the public.

The contention that an administrative body may not make determinations which affect a person's property is also frivolous. See Magnolia Petroleum Co. v. Hunt, 320 U.S. 430 (1943); Lloyd Sabado Societa v. Elting, 287 U.S. 329 (1932).

7. Constitutionality of PVA's Hearing Procedures

As stated in section 3 above, the gist of the fourth count of the complaint is that the administrative decisions of

the PVB are "given the effect of judicial judgments . . . without the safeguards provided by the courts of New York State and New York City . . .". All of its decisions and judgments are therefore said to be null and void.

Plaintiff fires a broadside of 16 alleged defects in the procedures set forth by state statute for PVB hearings. See plaintiff's memorandum of law in support of motion for convening of three-judge court, pp. 13-16. Plaintiff, however, has not been injured by the PVB's hearing procedures because he has never been subject to them. He deliberately bypassed these procedures and chose to default. He does not claim that he did not receive notice of the parking violation summonses or the notices of rendering of a default. Plaintiff may not attack an entire administrative framework, whether or not applicable to his case. Black Coalition v. Portland School District No. 1, 484 F.2d 1040, 1042-43 (9th Cir. 1973) and cases cited therein. In any event, plaintiff's argument that the hearing procedures of the PVB are constitutionally deficient merely because they do not conform to those of the state courts is without merit. It is fundamental that due process does not mandate that an administrative agency follow any particular procedure. Goldberg v. Kelly, 397 U.S. 254, 262 (1970); compare Escalera v. New York City Housing Authority, 425 F.2d 353, 366 (2d Cir. 1970), cert. denied, 400 U.S. 353 (1970).

Had plaintiff pleaded not guilty and had a fine been levied after hearing, and had plaintiff then failed to pursue his Article 78 remedy, this would of course be a different case.

See Lombard v. Board of Education of the City of New York, 502 F.2d 631, 636, cert. denied, ___ U.S. ___ (March 17, 1975). Since plaintiff did not appear before a PVB hearing examiner, he has simply not been caused any deprivation by the hearing procedures. 42 U.S.C. § 1983. His claims as to the deficiencies in the PVB's procedures for the enforcement of default judgments have been considered in section 5 above. "We shall need much clearer directions than the Court has yet given or, we believe, will give, before we hold that plaintiffs in such cases may turn their backs on state administrative remedies and rush into a federal forum, whether their actions fall under the Civil Rights Act or come under general federal question jurisdiction."

Eisen v. Eastman, 421 F.2d 569, 569 (2d Cir. 1969) (Friendly, J.) cert. denied, 400 U.S. 841 (1970)

Plaintiff urges, memorandum in support of motion for convening of three-judge court, p.2 and following, that the lack of a jury trial in a state court deprives him of federal constitutional rights. It has never been held that the right to a jury trial in civil actions is an element of due process applicable to state courts through the Fourteenth Amendment.

Curtis v. Loether, 415 U.S. 159, 162 n.6 (1973); New York Central R.R. Co. v. White, 243 U.S. 188, 207-08 (1916). Trial by jury in civil actions in state courts may be modified or abolished altogether. Olesen v. Trust Co. of Chicago, 245 F.2d 522 (7th Cir. 1957), cert. denied, 355 U.S. 996 (1957). Thus plaintiff, assuming he has standing to raise the claim, has been deprived of no federal constitutional right by the absence of provision

for a jury trial in the Vehicle and Traffic Law. Whether that law is consistent with the New York Constitution is irrelevant.

8. Fraud

The second count avers that the defendant represented to plaintiff that PVE judgments were legally enforceable while defendant knew that such judgments were not legally enforceable. The claim is frivolous. New York law requires that the pleader show the misrepresentation of a material fact, its falsity, scienter, reliance, and injury. Sabo v. Delmah, 3 N.Y.2d 155, 164 N.Y.S.2d 714 (1957); So Ann Holmes at Baltimore, Inc. v. Dworetz, 25 N.Y.2d 112, 302 N.Y.S.2d 739 (1969). Here there is no evidence which colorably shows that defendant made any representation or reckless omission to plaintiff or that defendant had the requisite scienter.

Plaintiff has styled the complaint a class action, and prior to a court's determination whether an action may be maintained as a class action, it normally is presumed to be one. 23 Moore's Federal Practice (2d ed.), p. 23-1103. However, because of plaintiff's failure to move for class action determination and because the facts alleged are unique to plaintiff, the class action allegations have not been considered. See Mintz v. Mathers Fund, Inc., 463 F.2d 495 (7th Cir. 1972); compare Dolgow v. Anderson, 53 F.R.D. 664, 667 (S.D.N.Y. 1971), aff'd, 464 F.2d 437 (2d Cir. 1972). This action has not been

pending very long and there can be no conceivable prejudice to any other person who may wish to assert a claim similar to that of plaintiff.

Defendants' motion for summary judgment is granted because there is no genuine issue as to any material fact and defendants are entitled to judgment as a matter of law, as indicated in sections 4 - 8 above. Thus all the counts of the complaint are dismissed as to all defendants.

Plaintiff's motion for an order convening a three-judge court is denied, because the constitutional claims stated in the complaint are not substantial. Goosby v. Osser, 409 U.S. 512, 518 (1973); Rieves v. Oswald, 477 F.2d 1109, 1111-12 (2d Cir. 1973)

The Clerk is directed to enter judgment in favor of defendants dismissing the action.

SO ORDERED.

Dated: New York, New York
April 3, 1975

INZER B. WYATT
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
PETER V. KEILEY,

Plaintiff,

-against-

ELBERT HINKSON, etc., et al.,

Defendants.
-----x

: 74 Civ. 5075 (IBW)

: NOTICE OF APPEAL

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*Filed
4-7-75*

TO: W. Bernard Richland, Esq.
By Elliot R. Press, Esq.
Attorney for Defendants
250 Broadway
New York, N.Y. 10007

NOTICE IS HEREBY GIVEN that plaintiff in the above-entitled action hereby appeals to the United States Court of Appeals for the Second Circuit from the denial of plaintiff's motion for the convening of a three-judge court and the grant of defendants' motion to dismiss (treated as a motion for summary judgment) by order of Hon. Inzer B. Wyatt dated and filed April 3, 1975.

Dated: April 7, 1975.

CARL E. PERSON & WALTER C. REID

By

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